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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 365.

WILLIAM NAEGLIN, ANNIE NAEGLIN, ANNIE NAEGLIN, ADMINISTRATRIX OF HENRY KORTE, DECEASED, ET AL., APPELLANTS,

vs.

MARGARITAS MARTIN DE CORDOBA, JOSE MANUEL CORDOBA, JOSEFITA MARTIN DE DURAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED DECEMBER 16, 1897.

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(16,447.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 271.

WILLIAM NAEGLIN, ANNIE NAEGLIN, ANNIE NAEGLIN, ADMINISTRATRIX OF HENRY KORTE, DECEASED, ET AL., APPELLANTS,

vs.

DOLORITAS MARTIN DE CORDOBA, JOSE MANUEL CORDOBA, JOSIFITA MARTIN DE DURAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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1 Be it remembered that heretofore, to wit, on the thirtieth day of July, in the year eighteen hundred and ninety-four, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of record wherein Doloritas Martin de Cordoba *et als.* were appellants and Henry Korte *et als.* *was* appellees; which said transcript of record is in the words and figures *as* following, to wit:

2 *Transcript of Record.*

TERRITORY OF NEW MEXICO, }
Fourth Judicial District, County of Mora. }

Be it remembered, that heretofore, to wit: on the 29th day of March, in the year 1886, Marie Marta Doloritas de Martin and her husband, Josefa Martin de Cordova and Felipe Cordova, her husband, and Isabelita Martin, a minor, by Viviana Martin, her mother and next friend, by their solicitors, filed in the office of the clerk of the district court of the fourth judicial district of the Territory of New Mexico, sitting within and for the county of Mora, their bill of complaint against Henry Korte, which said bill of complaint is in words and figures as follows, to wit: (See amended bill hereafter.)

And afterwards, to wit: on the said 29th day of March, 1886, there was issued out of said clerk's office a subpœna and one copy.

And afterwards, to wit: on the 29th day of March, 1886, comes Thomas B. Catron, and enters his appearance for the complainants in said cause.

And afterwards, to wit: on the 5th day of April, 1886, there was filed in said clerk's office the subpœna heretofore issued, which was duly returned as served.

At a regular term of the district court of the first (now fourth) judicial district of the Territory of New Mexico, begun and held in and for the county of Mora at the court-house of said county on the first Monday of April, 1886; the same being Monday, April 5th, 1886, for the trial of causes arising under the laws of the Territory.

And afterwards, to wit: on the 6th day of April, 1886, the same being the second day of said regular term, the following, among other proceedings, were had to wit:

3 MARIA MARTA DOLORITAS MARTIN *et al.* *vs.* HENRY KORTE. } Chancery. No. 906.

Now comes the defendant, by his solicitors, Louis Sulzbacher and George W. Pritchard, for the purpose of this motion and for no other purpose, and moves the court to quash the return of service on the subpœna herein, for the reason that said subpœna was served on March 30th, and not March 29th, the last day service could have been had, and said motion is argued as well for said complainants as for said defendant.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, began and held in the county of Mora, at the court-house of said county, on the first Monday of September, 1886; the same being Monday, September 6th, 1886, for the trial of causes arising under the laws of the Territory.

And afterwards, to wit: on Monday, September 6th, 1886, the same being the first day of said regular term, the following, among other proceedings, were had to wit:

MARIA DOLORITAS DE MARTIN *et al.*
vs.
HENRY KORTE. } Chancery. No. 906.

The motion to quash the service of subpœna having been argued by counsel and taken under advisement by the court at a former day of the court, and the court being now sufficiently advised in the premises: It is ordered that said motion be and the same hereby is overruled; and thereupon said defendant by his solicitor-, George W. Pritchard and Louis Sulzbacher, enter- *their* appearance herein, and thereupon upon plaintiffs' motion it is ordered that complainants have and are hereby given leave to file an amended bill herein, which is now done, with leave to said complainants to hereafter verify said amended bill. And it is ordered that said defendant be and *are* hereby given thirty days in which to plead, answer or demurr*er* herein. Said amended bill being in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, } *ss:*
County of San Miguel, }

In the district court of the first (now fourth) judicial district of the Territory of New Mexico, sitting within and for the county of Mora, for the trial of causes arising under the laws of said Territory at the September term, A. D. 1886.

To the Hon. Elisha V. Long, chief justice of the supreme court of the Territory of New Mexico and judge of the first (now fourth) judicial district court thereof, in chancery sitting:

Your orators and oratrixes, Doloritas Martin de Cordova and Jose Manuel Cordova, her husband, Josefita Martin de Du-
4 ran, and Jose Manuel Duran, her husband, and Isabelita Martin, an infant under the age of twenty-one years, by Viviana Martin, her mother and next friend, all residents of the county of Mora, and Territory of New Mexico, bring this their amended bill of complaint against Henry Korte, resident of the same county, and thereupon they complain and say: That about the — day of ——, A. D. 1885, one Frederick Metzger, who was sometimes known and called by the name of Frank Metzger, and sometimes by the name of "Francisco Metzger," departed this life at the county of Mora aforesaid, where he had resided for more than thirty years prior thereto. That said Metzger died intestate, and had never been

married, and left him surviving no legitimate children or descendants and no ascendants.

That your oratrixes, Doloritas, Josefita and Isabelita who all survived said Metzger, are the natural children of the said Metzger, and one Viviana Martin, who is and always has been a single and unmarried woman. That at the time of the conception and birth of your said oratrixes, there was no impediment to said Metzer intermarrying with their said mother; that their said mother at the time of the conception and birth of each one of them, resided in the house of said Metzger, and was supported, kept and maintained by him, and at the time aforesaid lived and cohabited with him solely. That at the time of the birth of your oratrixes, and frequently thereafter, said Metzger recognized your oratrixes as his natural children. That said Metzger left him surviving no other natural children or descendents of his natural children. That on the death of the said Metzger your oratrixes became and were the sole and universal heirs of him to all of his property, and entitled to receive, possess and enjoy the same.

They further show that the said Metzger at the time of his death was possessed of a large estate, consisting of lands, moneys, personal property, chattels, and choses in action and cattle, situated principally in the Territory of New Mexico, and the State of Missouri, but the amount, quantity and value thereof, and the exact location, quantity and value of the same, they are unable to state further than the same may be hereafter more specifically set forth and mentioned.

That after the death of the said Metzger, said defendant applied for and obtained letters of administration upon the estate of the said Metzger in the probate court of said county of Mora, and thereafter falsely, fraudulently and with intent to defraud your oratrixes out of the said property and estate, made out and filed in said probate court an inventory, in which it was made to appear that the personal property belonging to the said estate was only of the value of one hundred and eighty dollars, and gave bond as such administrator in accordance with such value.

5 They further show that the said Metzger, during his residence in the said county of Mora, for over thirty years, had accumulated real and personal property, a great portion of which was situated in the county of Mora, at the time of his death, amounting in value to at least one hundred thousand dollars, and that in the year 1885 he returned to the assessor of said county and paid taxes upon twelve thousand dollars in cash, and they allege and charge that at the time of his death he was possessed of a much larger sum than twelve thousand dollars in cash, all of which said property passed into the hands of the said Korte upon the death of the said Metzger.

They further show that about the year 1861 or 1862, the said defendant was taken into the employ of the said Metzger, who was then engaged in merchandising, farming, ranching and stock-raising, as a confidential clerk; that about the year 1868 defendant intermarried with one Juana, an illegitimate and bastard child of

said Metzger, and later, about the year 1870, said defendant entered into a copartnership with the said Metzger, under the firm name and style of Henry Korte, said Metzger furnishing and contributing all of the money and capital to said copartnership firm, to the amount of nearly one hundred thousand dollars, with the understanding between them that the said defendant should so far as possible take charge of, manage and run said business of said copartnership in connection with said Metzger, and receive as his share one-half of the net profits, the said Metzger being at this time very old and infirm, and desirous of being relieved, as far as possible, from the care and vexation of his said business. It being understood between them, however, that said Metzger would continue in said business, and give his supervision and care to the same, so far as the same might be necessary and requisite therefor. That from the time of the formation of the said copartnership until the day of his death, said Metzger lived and resided in the same house with the said defendant and his said wife, Juana, and continued to give his personal care, attention and supervision to all of said business of said copartnership, and to advise and control the said Korte in the management thereof.

That upon the formation of the said copartnership, or very soon thereafter, said Metzger transferred and conveyed all the property of which he was then possessed to the said copartnership, named and styled "Henry Korte," in and by which name and style the same was thereafter managed and controlled by the said defendant, Henry Korte, and the said Metzger up to the time of his death, and it was understood between them that the same was held in the said name of Henry Korte as copartnership property, for which the said copartnership was indebted to the said Metzger for the full value thereof,
and that the said conveyances were for no other or further
6 consideration than that the same should be accounted for to
the said Metzger or his said estate for the full value thereof, upon the final settlement of his estate. Copies of conveyances, so far as your oratrixes have been able to obtain the same, to some portions of said land, are herewith filed marked Exhibits —, and are made parts of this bill of complaint.

That upon the death of the said Frederick Metzger, your oratrixes, who are his sole and only heirs, became and were and are now entitled to have and receive from the said Henry Korte, as surviving partner of said Frederick Metzger in said copartnership business, and out of the property in said copartnership business, all of the property turned over to and placed in said copartnership by said Frederick Metzger, or the full and complete value thereof, as also the one-half of all the increase, profits and income of said copartnership business since the time of the formation of the said copartnership, which said increase, profits and income amount, as your orators are informed and believe, to about one hundred thousand dollars, they being unable to state more exactly the amount thereof from the fact that all of the books, papers, accounts, invoices, memoranda, bills of sale, conveyances and other writings referring to and pertaining to the said copartnership business and

the property thereof are now in the hands, power and control of the said defendant, who although requested so to do by your oratrixes, refuses to exhibit or show the same to your orators, or allow them to see the same, or to give your oratrixes any information with reference to the same, but keeps the same secreted, concealed, hidden and removed from your orators, so that they cannot have any access to or opportunity to see or inspect the same, or obtain any information therefrom.

Your orators however charge the fact to be that in addition to a large amount of landed property which was conveyed and turned over to said copartnership in the formation thereof by the said Frederick Metzger, that there was a large amount of goods, wares and merchandise which were then in the store and mercantile business carried on by the said Metzger in the town of Mora, as well as notes, due bills, evidences of indebtedness, outstanding accounts, and other obligations, all of which were due to the said Metzger at the time of the said copartnership, all of which were turned over and conveyed to the said copartnership by the said Metzger, and which were thereafter sold, collected in and converted into money by the said copartnership, and in that manner remained a part of said copartnership property. That there was also turned over, transferred and conveyed to the said copartnership and the business thereof by the said Frederick Metzger, a large number and amount of live stock, consisting of neat cattle, horses, mules, burros, hogs, sheep and other domestic animals amounting in value to forty or fifty
7 thousand dollars. That there was also turned over to, and conveyed to the said copartnership, and the business thereof, all of the farming implements, machinery and other implements of husbandry at that time owned, possessed or used by the said Frederick Metzger, upon his agricultural lands, and in and about the cultivation thereof, together with a large amount of grain of all kinds and descriptions, and fruits which the said Metzger at the time had in his possession, as also all other real and personal property, notes, accounts, book accounts, evidences of indebtedness, choses in action, and in fact everything to which either in law or equity, he, the said Frederick Metzger, at the time of the formation of the said copartnership had any right, title, interest, estate, demand, right of action, or claim whatsoever.

Your orators further state that of the real estate which was conveyed to said copartnership, there were several thousand acres, the exact acreage being to your orators unknown, that upon the same there were various houses, edifices, barns, stables, granaries and other houses and improvements, including a large amount of fencing; that the greater portion of said lands were agricultural lands and were in a high and profitable state of cultivation, there being planted on some of them several thousand fruit trees, which have ever since the formation of said copartnership been fruit-bearing, and have yielded a large amount of fruit, which was sold and disposed of at a very large profit and the same converted and turned into money.

That the said agricultural lands have every year since the formation of the said copartnership been planted in grain of various kinds

the crops whereof, have been luxuriant, and have been sold and converted into money, at a very large profit to the said copartnership; that the net annual profits and income from the fruits and grains produced on said agricultural lands *has* not been less than eight thousand dollars to said copartnership. That the said merchandise business carried on at the said town of Mora was also very profitable and lucrative to said copartnership; the net annual profits thereof amounting to at least five thousand dollars. That said copartnership also during its existence kept and had one or more ranches for the purposes of raising and grazing cattle, and raised, grazed and kept thereon at various times, large amounts of neat cattle, horses and sheep; that said cattle proved to be extremely profitable and there was sold and disposed of therefrom, cattle and other animals, amounting in value to at least sixty thousand dollars, by the said Henry Korte acting for the said copartnership, all of which said money either belonged to the capital put in the said copartnership by the said Metzger, or belonged to the profits of said business; the cost of said cattle herds having been paid almost entirely out of said mercantile business, in goods, wares and merchandise.

8 Your orators further state the fact to be that the said Frederick Metzger being very old and feeble, during the greater portion of the existence of said copartnership, confided and trusted the care, management and control of the greater portion of the said copartnership business, which was carried on outside of the town of Mora, to the said Henry Korte, but he exercised a supervision and superintending control over the same in a general way. That the said Henry Korte generally disposed of and sold the fruits and grains produced on the said lands, as also the cattle and other live stock belonging to the said copartnership, and received the money or whatever else was paid for the same. That said money and proceeds of said sales were taken into possession by the said Henry Korte, and large amounts thereof conveyed to the State of Missouri and other States and Territories in the United States, and there deposited in banks or with some other person, loaned out or invested in real estate, all in the name of the said Henry Korte or in some other name, either tacitly or ostensibly for the use and benefit of the said Henry Korte. That as they are informed and believe, that, either during the existence of said copartnership, or since the death of the said Frederick Metzger, said Henry Korte has invested large amounts of the money belonging to said copartnership in real estate or other property or notes or obligations, either in the State of Missouri or some other State in the United States, but particularly in the city and county of St. Louis in the State of Missouri, either in his own name, or that of some one of his children, they being all minors; but the exact character, nature, amount and description of said investments, where and when made, or in whose name made, or for whose benefit made, or with whom made, they are not informed thereof, and are unable to state, but they state and charge the fact to be that all of said investments were made either during the old age of the said Francisco Metzger and while he was infirm and unable to look after and attend to the same,

and without his knowledge or consent, or subsequent to his decease, or when it was well known that he could live but a short time, and were all made by the said Henry Korte for the express purpose of cheating, defrauding and depriving your oratrixes out of the same and the amount thereof.

That since the death of the said Frederick Metzger, the said Henry Korte, his surviving partner, has taken possession of all the money, notes, bonds, due bills, evidences of indebtedness, outstanding accounts, and other choses in action, and detains and conceals the same from your orators, and refuses to account to or with your oratrixes for the same. He also holds and possesses all conveyances, and other evidences of title on real estate or other property, situate in the State of Missouri, or any other State or Territory of the United States, which he has purchased or received with or on account of the money and other property be-
9 longing to said copartnership, whether in his own name or that of any one else, and refuses to give your orators any information thereof, or account thereof. That at the time of the death of the said Frederick Metzger, there was merchandise in the said copartnership business at the town of Mora amounting to about ten or twelve thousand dollars in value, possession of which was retained by the said defendant as surviving partner, and for which he refuses to give or render any account to your orators. That at the time of the death of the said Frederick Metzger there was fruit, grain and cereals on hand, the product of said agricultural lands, amounting in value to ten or twelve thousand dollars of the property of said copartnership, for which the said defendant refuses to give or render any account to your orators, and that there was also on hand belonging to said copartnership at the time of the death of the said Frederick Metzger, a large number of neat cattle, horses, mules, sheep, hogs and other domestic animals, and farming implements and machinery amounting in value to twenty thousand dollars, which the said defendant as surviving partner has taken possession thereof, and refuses to give or render any account to your orator- therefor.

Your orators further state that there are various other kinds, classes and descriptions of property belonging to said copartnership, at the time of the death of the said Frederick Metzger, the exact class, character and description thereof being to your orators unknown, amounting in value to twenty thousand dollars, or more, and which the said Henry Korte, as surviving partner has taken possession thereof, and refuses to give or render any account whatever therefor to your orators.

Your orators further charge that everything whatever belonging to said copartnership at the time of the death of the said Frederick Metzger has been taken possession of by the said defendant, who refuses to give or render any account whatever to your orators.

Your orators further state and charge the fact to be that the said Henry Korte is a very improper and unfit man to have charge, management or control of the said copartnership business or of the property, moneys, goods, merchandise, effects, chattels, notes, bonds,

due bills, choses in action, or other evidences of indebtedness, belonging to said copartnership, or to him as surviving partner thereof, or to collect in, sell or dispose of the said property or indebtedness, or to settle up or to wind up and close up the said business of said copartnership. That he has become exceedingly dissipated and reckless in his habits and is very much addicted to the drinking of ardent spirits, and during the greater portion of the time keeps himself so much under the influence of liquor that he is absolutely unfit mentally or physically to manage, control, or to do any business intelligently or properly. That he has been squandering or dissipating large amounts of the money and other property of the said copartnership in a most reckless and extravagant manner without reference to the interests of your orators, and to their great injury and prejudice. That he has neglected and allowed to go to ruin and become lost and destroyed large amounts of the personal property belonging to said copartnership, which had come into his possession as the survivor thereof, and of which it was his duty to take care, manage and control and account to your orators therefor. They further state that the said defendant has been disposing of, concealing, hiding and removing the said property belonging to the said copartnership from the Territory of New Mexico and from the jurisdiction of this court, so that the same cannot be found or reached by the process of this court, and he gives out and threatens that he intends to sell off and dispose of the whole of the said property and convert the same into money, or other evidences of indebtedness, and keep, hide and conceal and otherwise dispose of the same, so that your orators will be unable to obtain any portion of the same, and so that it will be impossible to obtain the same by any process of this court. They further state that many of the notes and outstanding accounts, due to the said copartnership have been long since past due, and the statute of limitations of this Territory has run against some of them. That many of the parties, who were indebted to the said copartnership, have been financially embarrassed and the same have become insolvent. That there is great danger that all of said indebtedness will become lost to your orators unless some very active and energetic means are taken to collect and secure the same. That the said defendant neglects to take any steps toward the collection thereof, because he is afraid your orators will gain some information with reference thereto, and he will be compelled to render an account therefor; he, the said defendant, having given out and stated and threatened that he will suffer the whole of the said property and indebtedness to become dissipated, lost and destroyed rather than your orators shall obtain any portion of the same, or any benefit therefrom, and your orators greatly fear that he will carry his said threats into execution, and that they will thereby be irreparably injured and damaged.

And they further charge the fact to be, that the said defendant has concealed and hidden away all of his own individual property, if any he has, so that the same cannot be found, or reached, by any ordinary process of law, and that he has not sufficient visible or

tangible property which can be found within this Territory, out of which to repay your orators for the damages they will suffer and have suffered on account of the acts and doings and threats of the said defendant as aforesaid, should he carry said threats into
11 execution, and they further state that the loss which they have already suffered, from the said acts of the said defendant, is more than he will ever be able to repay with any property which he has within the jurisdiction of this court or can be reached by any ordinary process of law.

That in order to protect said property and save the same to your orators, it is absolutely necessary that some suitable and proper person be at once appointed, as a receiver of said copartnership business, to take possession of the same, and of all the property, real estate, lands, goods, chattels, merchandise, notes, bonds, bills, accounts, books of account, and all evidences of indebtedness belonging to said copartnership, or to said defendant, as surviving partner thereof, as well as of all other business transacted by him as such surviving partner since the death of the said Frederick Metzger, and also of all property, real and personal, belonging or due to him, as such survi-ng partner, including all notes, bonds, bills, accounts, books of account, obligations, mortgages, conveyances, trust deeds, and other assurances and evidences of debt, which he may hold as such surviving partner, or which may have been made, executed or delivered to him, or which may have come into his possession or control as such surviving partner at any time or in any manner.

All of which said actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators.

Inasmuch, therefore, as your orators are remediless by the strict rules of the common law, and relievable only in a court of equity, where matters of this nature are properly cognizable, your orators apply to your honor's court in chancery, and pray that the said defendant may be compelled, true, direct and perfect answers to make to each and every allegation in this bill contained, but not under oath, an answer under oath being hereby expressly waived; that he may be compelled to discover disclose and set forth specifically each and every piece, part and portion of real property, and where it is situate, he ever received from the said Frederick Metzger, each and every piece, part and portion of real estate, and where situated, which the said Frederick Metzger ever conveyed to the said firm of Henry Korte, or which he ever transferred to or unto the name of Henry Korte, that he also give the date of each of the conveyances, so conveying the said lands and file the same or a correct copy thereof with his said answer; that he also set forth and discover and disclose each and every article of personal property with the description thereof, and when and where received, which was ever transferred, conveyed or turned over to the said firm by the said Frederick Metzger, or which was ever received by him as a member of said firm or otherwise, together with the date and value thereof; that he also set forth, discover and disclose, all

notes, bonds, due bills, accounts, mortgages, assurances, out-
12 standing indebtedness and other evidences of indebtedness,
which were owing to the said Frederick Metzger at the time of the formation of the said copartnership or which ever came into his possession, power or control from the said Frederick Metzger, with the full amount thereof, with each item thereof, and what has been done with the same. That he also set forth, discover and disclose what amount of personal property, consisting of neat cattle, horses, mules, burros, sheep, hogs, goats, and other domestic animals was ever turned over by the said Frederick Metzger to said firm of Henry Korte, or which was ever received by him, the said defendant, from the said Frederick Metzger in any manner whatsoever, and when and where the same was received, with the number and full value and particular description thereof, and that he also include therein, all farming implements and instruments of husbandry so received by him; that he set forth, discover and disclose the full amount of all money turned over to the said firm of Henry Korte by the said Frederick Metzger, or which was ever received by him, the said defendant, from the said Frederick Metzger in any manner whatever, and what has been done with the same; that he also set forth, discover and disclose the full amount and value of the increase of all of said cattle, horses, burros, mules, sheep, hogs, goats and other domestic animals, which the said Frederick Metzger turned over to the said firm, or which he, the said defendant, ever received from the said Frederick Metzger, and what has been done with the same, as well as the principal thereof, as also what number of animals of the said descriptions the said firm purchased during its existence, or which he, the said defendant, ever purchased during the existence of the said firm or since the death of the said Frederick Metzger, together with the increase thereof, and the full value thereof, and with what means or funds the same were purchased, and when and how the same have been disposed of, and what has been done with the proceeds of all the said cattle, and live stock above mentioned and referred to; that he also set forth, discover and disclose the full amount and value of the proceeds and income of all of the said lands, conveyed to said copartnership, or into his name by the said Frederick Metzger, giving the gross amounts of the said receipts annually, and the full cost of the annual outlay to produce the same, and that he also set forth, discover and disclose what he has done with the proceeds of the said lands, and where the same now are, including all receipts therefrom up to the present date; that he also set forth, discover and disclose the full amounts of all profits and income of all mercantile business carried on by said firm or by him since the death of said Frederick Metzger or in the name of Henry Korte at any time whatsoever in the Territory of New Mexico, together with a full amount of all goods and
merchandise on hand at the time of the death of Frederick
13 Metzger, and what has been done with the same; that he also
set forth, discover and disclose what real estate has been purchased by the said copartnership firm or by himself acting for said firm or otherwise, and what real estate has been purchased and the

titles thereto taken in the name of Henry Korte, or in the name of the children of the said defendant, or in the name of any other person for the use and benefit of the said defendant or of the said copartnership, or of any of the children of the said defendant, whether the same be so expressed in the said conveyances or not, and if so in whose name the same is taken, and where situate, whether in the Territory of New Mexico, or any other State or Territory, and what was paid for the same; that he also set forth, disclose and discover all other property which he may have received at any time whatever from the said Frederick Metzger and the proceeds of the said property, and on what account he received the same.

That a suitable and proper person be appointed receiver of all of the property, real and personal, notes, bonds, bills, accounts, books of account, mortgages, deeds of conveyance, evidence of indebtedness, and all other writings and papers of any value whatever, or which may be evidence of anything of value, which belonged to said copartnership during the lifetime of said Frederick Metzger, or to the said defendant as surviving partner thereof, at any time up to the present date; that he be authorized to collect, get in all of said property and outstanding indebtedness, and to sell and dispose of and to realize upon the same, and to take charge, manage and control and wind up said copartnership business under the supervision and direction of this court, and account for the same as this court may direct, and that in the meantime the said defendant be enjoined and restrained by writ of injunction issued out of your honor's court from selling or disposing of in any manner whatsoever, or converting to his own use any of the real or personal property or outstanding indebtedness or evidence thereof, and from interfering with the said receiver in taking possession thereof, and managing and disposing of the same; and that he be directed and required by your honor's order, issued to him for that purpose, to turn over to said receiver all of said property, real and personal, evidences of indebtedness, accounts, book accounts, and all other books and papers of any use or value whatever in and about said copartnership business or his management thereof, as survivor thereof.

That an account be taken of everything turned over, paid over to, or delivered to said copartnership by the said Frederick Metzger, and of all the increase, income, and profits of the property and business of said copartnership to the present time.

That there be decreed and paid over to your orators the full value of all the property and everything else turned over to
14 the said copartnership by the said Frederick Metzger at the time the same was so turned over, and so far as practicable the identical real estate turned over by the said Frederick Metzger be decreed to your oratrixes, and that one-half of all the residue, rest and remainder of all of the real and personal property and outstanding indebtedness due and owing to said firm, or to the said defendant as survivor thereof, in whomsoever's name the said property may be standing, and wherever the same may be situate, or the value thereof, be decreed to and in favor of your oratrixes, and that

the one-half of all the net profits and income of the said business be also decreed to and paid to your oratrixes, and that your oratrixes may be decreed to have and receive whatever in justice and equity may be properly found to belong to them as the sole heirs to the said Frederick Metzger out of the said copartnership business, or due to them by the said defendant, of any account whatever, and they pray for such other relief in the premises as the nature of the case requires and to your honor may appear meet and proper.

Will your honor therefore grant the proper process directed to the said defendant, Henry Korte, to compel him to make answer hereunto, and your oratrixes will therefore pray, etc.

her
DOLORITAS MARTIN x DE CORDOBA.
mark.
her
JOSEFITA MARTIN x DE CORDOBA.
mark.
ISABELITA MARTIN.

T. B. CATRON,
JOHN D. W. VEEDER,
Solicitors for the Complainants.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Doloritas Martin de Cordoba, being duly sworn, upon her oath states that she is one of the complainants in the foregoing bill of complaint by her above subscribed; that she has heard read the same and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated to be on her information or belief, and as to these matters she believes them to be true.

her
DOLORITAS x MARTIN DE CORDOVA.
mark.

Subscribed and sworn to before me, the undersigned, this 8th day of September, 1886.

FERNANDO NOLAN,
[SEAL.] *Notary Public.*

15 TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Josefita Martin de Duran and Viviana Martin being duly sworn upon their oaths, say that they have read the foregoing bill of complaint, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters which are therein stated to be on information and belief and as to those matters they believe them to be true.

her
JOSEFITA x MARTIN DE DURAN.
mark.
her
VIVIANA x MARTIN.
mark.

Attest: J. D. W. VEEDER.

Subscribed and sworn to before me, the undersigned, this 8th day of September, A. D. 1886.

[SEAL.]

FERNANDO NOLAN,
Notary Public.

Interrogatories for the Examination of Henry Korte, the Defendant, in Answer to the Complainants' Bill of Complaint.

1st. State the amount, character and description, value and location of all the real and personal property owned and possessed by Frank Metzger at the time of his death, including all moneys, bonds, bills, notes, choses in action, and other evidences of indebtedness.

2d. State the amount, character and description, value and location of all the real and personal property owned and possessed by Frank Metzger at the time you were taken into his employ in about the year 1861 or 1862.

3rd. State the date of the formation of the copartnership with Frank Metzger.

4th. State the amount, character, description, value and location of all the real and personal property owned and possessed by Frank Metzger at the time of the formation of the copartnership with him.

5th. State the amount, character and description, location and value of all the personal property and real estate owned and possessed in your own right at the time of the formation of the copartnership with Frank Metzger, including all money, bonds, bills, notes, choses in action, etc., and where the same were deposited, from whom due and owing, with the names of the makers, the amount, time, etc., giving all the items specifically.

6th. State the amount, character, description, value and location of all the real and personal property, including money, bonds, bills, notes, etc., that you and Frank Metzger contributed to said
16 copartnership at the time of its formation, and the amount, character, description, value and location of all the real estate and personal property, including money, bonds, bills, notes, etc., that each of you contributed respectively.

7th. State the date of your marriage with Juana?

8th. State where and in whose house the deceased Frank Metzger lived, from the time of your marriage with Juana up to the time of Frank Metzger's death.

9th. State the amount, character, value and description of all the real and personal property, moneys, bonds, bills, notes, etc, and if any such was transferred, conveyed or delivered to you by Frank Metzger from the time of the formation of the copartnership with Frank Metzger up to the date of his death.

10th. State whether the copartnership of yourself and Frank Metzger was dissolved by death and whether or not there has ever been any settlement of the copartnership business.

11th. State what the profits, increase and income of the copartnership business are, from the time of its formation up to the date of the death of Frank Metzger, and what has been done with, and what

use made of the said profits, increase and income of the said copartnership business during that period.

12th. State what the profits, increase and income of the said business *has* been from the time of the death of Frank Metzger up to the present, and who has collected and taken charge of the said profits, increase and income of the said business and what use has been made of the same.

13th. State who has kept the books of the said copartnership of yourself and Frank Metzger from the date of its formation up to Metzger's death, and where the said books now are, and in whose keeping and under whose control.

14th. State what business Frank Metzger was engaged in at the time you entered into copartnership with him, and where said business was done and carried on.

15th. State the amount and value of the goods, wares and merchandise which were in the store of Frank Metzger at the time you entered into copartnership with him, and what was done with the same.

16th. State the value of the notes, due bills, outstanding accounts and other obligations and evidences of indebtedness due to Frank Metzger at the time you entered into copartnership with him, and give the amount, date and name of payor of each respectively, and what has become of the same.

17th. State the number and value of neat cattle, horses, mules, sheep, burros, goats and other domestic animals, owned and possessed by Frank Metzger at the time you entered into copartnership with him, and what has become of the same, and if sold, to whom and the price?

17 18th. State what real estate and ranches were owned and possessed by Frank Metzger at the time you entered into copartnership with him, and the value of the same with the improvements, and what was afterwards done with said ranches, and if sold, to whom and the price.

19th. State what farming machinery and utensils and implements of husbandry were owned and possessed by Frank Metzger at the time you entered into copartnership with him and the value of the same and what was done with them after the formation of the copartnership.

20th. State what — the profits, increase and income of the real estate and ranches owned and possessed by Frank Metzger, at the time you entered into copartnership with him, during the entire period from the date of the formation of said copartnership up to the time of Metzger's death and who has received said profits, increase and income.

21st. State the number of acres of agricultural lands owned and possessed by Frank Metzger at the time you entered the copartnership with him, also the number of acres of orchard if any?

22nd. State the number of cattle you have sold and the price received, since the formation of the said copartnership with Frank Metzger in the year 1877.

23rd. State when, how and by whom and to whom Frank Metzger sold and disposed of his cattle and the price received for them.

24th. State the amount, value and description, of all the real estate and personal property, the improvements upon said real estate, if any, the amount of money loaned or deposited, and all bonds, bills, notes, etc., you own, hold or control in the State of Missouri, or any other State or Territory of the United States with the date of said purchase, or the making of said loan, or loans, the date also of said bonds, bills, and notes, the name of the grantees and payees and all particulars specifically.

25th. State the age of Frank Metzger at the time of his death.

T. B. CATRON,
JOHN D. W. VEEDER,
Solicitors for Complainants.

TERRITORY OF NEW MEXICO, } *ss:*
County of Mora, }

John D. W. Veeder, being duly sworn upon his oath says, that he is one of the attorneys for the complainants in the above-entitled cause, and that he believes the foregoing interrogatories and the answers to the same material to complainants' cause.

JOHN D. W. VEEDER.

18 Subscribed and sworn to before me, the undersigned, this 8th day of September, A. D. 1886.

[SEAL.] FERNANDO NOLAN,
Notary Public.

And afterwards, to wit: on the 26th day of October, A. D. 1886, there was filed in said clerk's office a stipulation extending time to plead, which said stipulation is in words and figures as follows:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906. Chancery.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys, T. B. Catron and John D. W. Veeder on behalf of complainants, and Louis Sulzbacher on behalf of defendant, that the rule heretofore made and entered in said cause requiring said defendant to plead within thirty days be extended to the second Monday of the special November term, A. D. 1886.

T. B. CATRON,
JOHN D. W. VEEDER,
Solicitors for Complainants.
LOUIS SULZBACHER,
Solicitor for Defendant.

And afterwards, to wit: on the 26th day of October, 1886, there was filed in said clerk's office a motion to strike from the files the interrogatories filed with the amended bill, which said motion was in words and figures as follows:

District Court, Mora County, April Term, A. D. 1886.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } Chancery.

And now comes the said defendant by his solicitors, and moves the court to strike the interrogatories annexed to said bill of complaint from the files, for the following reasons:

1. That there is no law in this Territory authorizing the annexing of interrogatories to a bill of complaint in equity, and demanding an answer under oath to the same from a defendant; the same can only be required and is only applicable in a suit at law.

2. In a suit in equity in which the answer under oath to the bill of complaint is waived by complainant, it is optionary with defendant to answer under oath or not; and any proceeding or demand by a complainant requiring an answer under oath to a
19 part of a bill when an answer under oath as to the whole is waived, is inconsistent with the rules of equity.

LOUIS SULZBACHER,
G. W. PRITCHARD,
Solicitors for Defendant.

And afterwards, to wit: on the 26th day of October, 1886, there was filed in said clerk's office a demurrer of defendant, which said demurrer is in words and figures as follows, to wit:

Demurrer.

District Court, Mora County, April Term, A. D. 1887.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } Chancery.

The demurrer of Henry Korte, the defendant, to the bill of complaint of complainant Doloritas Martin de Cordoba and Jose Manuel Cordoba, her husband; Josefita Martin de Duran and Jose Manuel Duran, her husband, and Isabelita Martin, by Viviana Martin, her mother and next friend.

The defendant, by protestation, not confessing any of the matters in and by said bill complained of, to be true in manner and form as the same are set forth, says: that he is advised that there is no matter or thing in said bill good and sufficient in law to call this defendant to account in this honorable court, for the same, but that there is good cause for demurrer thereunto, and he does demur accordingly; and for causes of demurrer says: that said bill in case the same were true contains no matter of equity whereon this court can ground any decree or give complainants any relief against the defendant.

And for causes of demurrer shows the following:

1. Because said Jose Manuel Cordoba and Jose Manuel Duran

are improperly joined as parties complainant, because it appears that said Jose Manuel Cordoba is the husband of said Doloritas Martin de Cordoba, and said Jose Manuel Duran, as being the husband of Josefita Martin de Duran, and it appears also, that the supposed property in controversy, and the supposed rights which are sought to be enforced, if any such are or exist, would be the separate property of said Doloritas Martin de Cordoba and Josefita Martin de Duran and owned by them alone, and that their said husbands, respectively, have no interest whatsoever in the same, and that said Doloritas Martin de Cordoba and Josefita Martin de Duran, and the other complainant, Isabelita Martin, are the real parties in interest, and the said Jose Manuel Duran and Jose Manuel Cordoba have no interest in the subject-matter of said supposed claim or in the result of said suit.

20 2. Said complainants have a complete, plain, and adequate remedy at law, for the supposed grievances complained of in said bill.

3. Because said complainants, in case they are the heirs of said Metzger, they must first establish their rights as such in the probate court, or allege that they were recognized as such by the probate court, the said court having exclusive original jurisdiction in matters of such nature and kind, and of the said supposed grievances.

4. Said bill of complaint alleges supposed charges and derelictions of duty against said defendant as administrator of Frank Metzger, deceased, and for having failed to comply with his duties as such administrator, and he is only made a party defendant in his individual capacity and not as administrator; and all such matters are primarily cognizable in the probate court, the same having exclusive original jurisdiction in matters of that kind.

5. There is no law in the Territory of New Mexico authorizing a suit of that character, and complainants' supposed rights as natural children cannot be enforced, if existing at all, under any law now in force in this Territory.

6. Said bill of complaint does not allege that at the time of said supposed conception there existed no legal impediment to marriage between Frank Metzger and said Viviana Martin.

7. Said bill of complaint does not show or allege that the said Viviana Martin was a woman of good character.

Wherefore, and for divers other errors in said bill of complaint contained, and appearing on the face thereof, the defendant demurs and humbly craves the judgment of this honorable court, whether he is compelled, or ought to make any answer thereto, otherwise than as aforesaid.

And defendant humbly prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

G. W. PRITCHARD,
LOUIS SULZBACHER,
Solicitors for Defendant.

We, the undersigned, solicitors for the defendant in the foregoing cause, do hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

G. W. PRITCHARD,
LOUIS SULZBACHER,
Solicitors for Defendant.

TERRITORY OF NEW MEXICO, }
County of San Miguel, } *ss:*

Louis Sulzbacher, being duly sworn, says that he is one of the solicitors for the defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

LOUIS SULZBACHER.

21 Subscribed and sworn to before me this 23d day of October, 1886.

[SEAL.] JOHN H. KOOGLER,
Notary Public.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held in and for the county of Mora, at the court-house of said county on the first Monday of April, 1887, the same being Monday, April 4th, 1887, for the trial of causes arising under the laws of the Territory.

And afterwards, to wit: on Tuesday, April 5th, 1887, the same being the second day of said regular term, the following among other proceedings were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906.

It is ordered that this cause be set down for hearing on the demurrer to said bill next Friday morning.

And afterwards, to wit: on Friday, April 9th, the same being the fifth day of said term of court, the following, among other proceedings were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906. Chancery.

The demurrer of the defendant to the bill of complaint herein being submitted to the court without argument, the court overrules the same *pro forma.* It is therefore ordered by the court that said demurrer be and hereby is overruled, and it is ordered that the said defendant have sixty days to answer herein.

And afterwards, to wit: on June 4th, 1887, there was filed in said clerk's office an answer of the defendant, which said answer is in words and figures as follows, to wit:

In the Mora District Court, —— Term, A. D. 1887.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE.
} Answer.

The answer of Henry Korte, defendant, to the bill of complaint of Doloritas Martin de Cordoba, Jose Manuel Cordoba, her husband, Josefita Martin de Duran and Jose Manuel Duran, her husband, and Isabelita Martin, complainants.

This defendant now and at all times hereafter saving and reserving all manner of benefit and advantage to himself of exception to the many errors and insufficienc-es in said bill of complaint
22 contained, for answer thereto or so much or such parts thereof, as this defendant is advised is material for him to make answer unto, answering says:

He admits that in the year A. D. 1885 one Frank Metzger departed this life; that he was called "Frank Metzger" and Francisco Metzger, and that he was a resident of the county of Mora for about thirty years before and up to the time of his death.

Defendant admits that the said Metzger died intestate, but is not advised as to whether the said Metzger had ever been married or not. He admits that he left no surviving legitimate children, or as descendants, but states the fact to be that he did have a natural child of his own, which child in the lifetime of the said Metzger was properly, duly and legally legitimized and adopted according to the laws of the Territory of New Mexico, and that said child so by the said Metzger legitimized and adopted is "Juana Korte," this defendant's lawful wife; and defendant believes and states the fact to be that said Juana is therefore the sole heir of the said Frank Metzger, deceased, and of all the property real and personal of which the said Metzger died, seized and possessed *of*.

He admits that the said Doloritas, Josefita and Isabelita survived the said Metzger, because he is still informed that each of them *are* still living; but he denies that they are the natural children of the said Metzger, or that the said Metzger ever recognized them as such. Defendant admits that so far as he knows they are the children of one Viviana Martin, and that said Viviana Martin was never married, and that said Doloritas, Josefita and Isabelita were born while the said Viviana was single, and he states and avers upon information and charges the fact to be that the said Viviana Martin, at the time, before and since the birth of said children, was a dissolute woman, and public prostitute, and that she had lived with several men and had given birth to several children while so living with them, and that Doloritas, Josefita and Isabelita were among such children.

Defendant is not advised whether at the time of the conception and birth of said oratrixes there was any impediment to said Metzger's intermarriage with their said mother or not, but he states and avers that the said Metzger at no time had any intention of marrying the said Viviana Martin, the mother of the said oratrixes, and

that he believes that the said Metzger would not have married any one bearing the character and reputation that the said Viviana Martin bore.

Defendant is not advised whether the said Viviana Martin at the time of the conception and birth of each of said oratrixes resided in the house of said Metzger or not, but if she did it was probably a house owned by said Metzger, and this defendant states the
23 fact to be that said Metzger never resided in the same house with the said Viviana Martin, and that if the said oratrixes were conceived and born at a house owned by said Metzger, it was the result of immoral practices of said Viviana Martin, for which the said Metzger was in no manner responsible.

Defendant denies that the said Metzger ever at any time supported the said Viviana Martin, or that he kept and maintained her, or that he ever cohabited with her, and that all said allegations are false in every particular, and were concocted, as he believes, since the death of the said Metzger by evil-disposed persons, with the view and for the purpose of harrassing and annoying this defendant.

This defendant absolutely denies that said Metzger at the time of the birth of said oratrixes, or at any other time, frequently recognized them as his natural children, but he states the fact to be that said allegations and assertions are not true, and that said Metzger never recognized said children as his children in any sense whatsoever, and he denies that the said Metzger left surviving him no other children than the said oratrixes, and he avers and states that the said Metzger left surviving him one natural child, viz., Juana Korte, the wife of this defendant, and that he left surviving him no other natural child, and he positively denies that said oratrixes at the time of the death of said Metzger, became and were the sole and universal heirs of said Metzger, and of all his properties, and entitled to receive, possess and enjoy the same, but he avers that said oratrixes are entire strangers to said Metzger and his estate, and are not entitled to receive, possess or enjoy any of the property left by him when he dies, but that they are unlawfully attempting to intrude themselves as his heirs, and create and manufacture a relationship which never existed.

Defendant is not advised whether the said Metzger at the time of his death was possessed of a large estate, consisting of lands, moneys, personal property, chattels, choses in action and cattle, principally in the Territory of New Mexico and State of Missouri, and he therefore denies the same, believing that no such property existed at the death of the said Metzger; defendant admits that said complainants are unable to state the amount, nature, quantity and exact location of the property which they allege in their bill of complaint to exist as having belonged to the said Metzger at the time of his death, but he avers and states the fact to be that so far as this defendant has been able to ascertain, the said Metzger left no real estate in the Territory of New Mexico, and if he left any in the State of Missouri this defendant is advised that this court has no jurisdiction of the same.

Defendant avers that the said Metzger at the time of his
24 death left only the following goods and chattels and personal property of any kind which defendant was able to find, to wit:

(Here insert.)

and that the same are now in his possession as administrator. Defendant says that he had been informed, not by the said Metzger, but by others, that at the time of Metzger's death he was possessed of some money, and that the same was kept by him at some place secreted and hidden away, but where said money was kept, if in fact it existed, this defendant has absolutely no knowledge whatever; that as such administrator he has made diligent search and inquiry, but has made no discovery of it, or received any information that would lead to its whereabouts.

Defendant admits that after the death of said Metzger he applied for and obtained letters of administration upon the estate of the deceased in the probate court of the county of Mora, but he denies that he fraudulently and falsely and with intent to defraud said oratrixes, or any other person or persons, out of any property or estate, made out and filed in said probate court an inventory in which it was made to appear that the personal property belonging to said estate was only of a value of one hundred and eighty dollars, or any other sum, but he states the fact to be that all the personal property which belonged to deceased, and which came to defendant's knowledge and possession after careful inquiry, was worth the sum named in the inventory according to the appraisement; that defendant had nothing to do with its appraisement; that the bond he gave as administrator, that he was required to give, which bond was furnished on the basis of said inventory, and duly approved by the court requiring the same.

Defendant states the fact to be that said allegation of the bill of complaint charging defendant with fraudulent intentions, is false in fact and without foundation, and was made by the complainants, as defendant believes, to give color to a pretended right or claim against the estate of the deceased, and against this defendant.

Defendant admits that said Metzger, during his residence in said county of Mora for over thirty years, accumulated real estate and personal property, and that a great portion of the same was situated in the county of Mora, but he does not know whether at the time of the death of the deceased he possessed any real estate in the county of Mora, amounting to at least one thousand dollars, or in any sum, or not, and he therefore denies the same, and believes the allegations to be untrue. Defendant denies that the said
25 Metzger in the year A. D. 1885 returned to the assessor of said county, and paid taxes on twelve thousand dollars in cash, or that he was possessed of a much larger sum than twelve thousand dollars, and defendant absolutely denies that any money except the amount mentioned in the inventory of said estate passed into his hands upon the death of said Metzger, or at any time before or since, and that said charge by said complainants is without

foundation and false in every particular; and this defendant avers that if the said Metzger had any money at the time of his death, that fact has never come to defendant's knowledge, and that the inventories filed by defendant was a full inventory of all the deceased's effects as above stated.

Defendant denies that in about the year 1861, or 1862, this defendant was taken into the employ of the said Metzger, nor does he know that the said Metzger was engaged in merchandising, farming, ranching and stock-raising, in either of those years, and he positively denies that he was then or at any time thereafter the confidential clerk of said Frank Metzger, or that he served him in any other capacity as an employee; that defendant did not come to New Mexico till the year A. D. 1861, and that he was not in the said Metzger's house until the year A. D. 1864, he therefore charges that said allegations so far as they refer to defendant are false in every particular.

Defendant admits that in the year A. D. 1867 he intermarried with said Juana, the child of the said Metzger, but he denies that in the year A. D. 1870, he entered into copartnership with said Metzger, or that the said business and copartnership was carried on under the name and style of Henry Korte, or that said Metzger furnished and contributed all the money and capital to any such copartnership to the amount of one hundred thousand dollars, or any other amount; or that there ever was any such copartnership between them under the name and style — Henry Korte, or that there ever was any understanding between them, that defendant should take charge and management of any copartnership in connection with the said Metzger, as in said bill of complaint set forth, or that defendant was to receive one-half of the profits or that the said Metzger was at the time very old and infirm, or that he was desirous of being relieved from the care and management of his business, or that it was understood between them that said Metzger would continue in said business and give his supervision and care to same, so far as it might be necessary and requisite.

Defendant denies there ever was any partnership entered into as in said bill set forth, but he admits that said Metzger resided in the same house with him and his wife, but he denies that he gave him the personal care and supervision of all said business or to any copartnership, there being no such copartnership, and he denies that the said Metzger ever advised and controlled, or that he attempted to control him in the management of any partnership or any other business matter, as charged in said bill, but the defendant avers and states the fact to be that at the time of the intermarriage with his said wife in the year A. D. 1867, as aforesaid, he entered into a copartnership with said Metzger in the business of general merchandise in the town of Mora; that said Metzger then had a stock of merchandise amounting to about sixteen thousand dollars, which he put into said partnership; that he gave at the time of the formation of said copartnership his daughter, the wife of the defendant, an interest to the amount of five thousand dollars in said business, and the defendant paid him, to wit: about

the sum of three thousand dollars; that they were thereafter equal partners in said business; that at that time the said Metzger also owned about — acres of land of the value of about nine thousand dollars; that said Metzger also offered defendant one-half of the profits arising therefrom upon the defendant taking charge and management, which he agreed to do, and did do; that they thereby become partners both in the business of farming and merchandising, and by close attention to their business become prosperous; that in the year A. D. 1873 the said Metzger intended to leave New Mexico and go to Europe; that in the month of June in said year the said Metzger still expecting to leave as aforesaid, proposed to defendant to sell him his interest in said merchandising and lands, and that defendant having saved a large amount of money from said business, bought and purchased said Metzger's interest in said merchandise, and also in a large portion of said land; that after that time he become the sole owner of said business, and carried on the same in his own name; that the said Metzger had no interest therein, nor did he pretend to have; that after such sale the said Metzger having reconsidered his visit to Europe and being very much attached to his daughter, the defendant's wife, and children, lived with them, and continued to live with them as their guest until his death; that he gave only such assistance to defendant's business as a business man naturally would when about a store after having lived a long and active life; that defendant often offered said Metzger a compensation for his services, but he refused to accept anything therefor, stating that he only assisted defendant to pass his time, and he did only such services as he chose to do, and the interest he took in defendant's business was solely on account of the love and affection he bore for his daughter and grandchildren, the wife and children of defendant; that said Metzger never attempted to manage said business, but defendant often sought his advice as an older man, and a person of vast experience.

Defendant denies that there ever was any copartnership
27 formed between them under the style and firm name of Henry Korte as alleged in said bill, or that the said Metzger ever transferred and conveyed any property, personal or real of which he was possessed, to any copartnership under the name and style of Henry Korte, or under any other copartnership name, or that said Metzger, up to the time of his death was a partner of defendant, or that it was understood between them that any business which might be carried on under the firm name and style of Henry Korte, should be considered a copartnership business, or that there was any copartnership indebtedness to the said Metzger, or that any conveyances from the said Metzger to defendant were for the supposed consideration, to be accounted for to the said Metzger or his estate upon a final settlement thereof, but defendant avers that the said Metzger and defendant were copartners in their said business in the name and style of Metzger and Korte; that said partnership continued in said firm name and style from the years A. D. 1867, to the year A. D. 1873; that in the said last-named year said copartnership was absolutely dissolved; the said Metzger retiring and de-

fendant carrying on said business in his own individual name; that since the dissolution of said copartnership as aforesaid the said Metzger and defendant have never been copartners in any business, and were not copartners in any business at the time the said Metzger died; that the exhibits filed with complainants' bill of complaint are copies of the conveyances from said Metzger to defendant; that from the time of the delivery of said deeds he became the sole owner of the lands and property therein conveyed, and at the time of the death of the said Metzger and for many years previous thereto, defendant was not indebted for said lands and property, nor did he owe to the said Metzger the amount of a single cent, nor is he now indebted to said estate in any sum whatever, except in the capacity of administrator to the value of about one hundred and eighty dollars as shown by the inventory hereinbefore referred to.

Defendant denies that the said oratrixes upon the death of the said Metzger become and are now entitled to have and receive from defendant any property placed by said Metzger into any copartnership as in said bill alleged, or that said oratrixes are entitled to any property whatsoever from defendant, or that he has any property to which they are entitled, or that he is in possession of any property of the deceased to which they are entitled.

Defendant denies that said oratrixes are entitled to the one-half of any increase, profits, or income amounting to one hundred thousand dollars from any copartnership as in said bill alleged.

Defendant denies that he has in his hands or under his control any books, papers, accounts, inventories, memoranda, bills of
28 sale, conveyances or other writings of any such copartnership business as in said bill alleged, and he denies that complainants ever requested him to exhibit to them any such books, papers, accounts and other matters above mentioned, and had they so requested him it would have been impossible for him to comply with such request, because such books, papers and things do not exist; but whatever books, papers, accounts and other matters there are in the hands of defendant, belonging to the estate of the deceased, this defendant denies the right of complainants to inspect or require defendant to produce.

Defendant denies that he ever refused to exhibit any books or papers of any kind to complainant pertaining to the estate of the deceased, or that he ever refused to give them any information called for in said bill of complaint, which was in his power to give, or that he has secreted, concealed, hidden or removed any books, papers or information from the complainants, or any of them, or to give them an opportunity to inspect any such matters as in said bill set forth, or that he has anything of the character and description as alleged to hide or conceal, and he denies that the complainants have any right to demand inspection of any books, papers, accounts, invoices, bills of sale, conveyances or any other writing or matter in defendant's possession, whether pertaining to his own individual affairs, or the individual affairs of the said Metzger in his lifetime, as such things do not concern the complainants, nor have they any interest in them, or anything connected with them.

Defendant alleges and states that the claim of said oratrixes to be the heirs of the said Metzger is a mere fabrication, and that they have no legal or other claims against the estate of the said Metzger; that the only copartnership which ever existed between the said Metzger and defendant was dissolved in the year A. D. 1873; that at that time the defendant became the sole owner of the whole of said partnership, assets, books, papers and other matters belonging thereto, that all the debts of said copartnership were paid long before its dissolution, that he paid the said Metzger in full for his interest therein, and that as to the books, papers and other matters belonging to said copartnership he denies the right of any person to inspect the same or to make such demand; that there is no person who has any interest save and except this defendant; that he has no reason to secrete or hide his own papers, nor the papers which belonged to the copartnership of Metzger and Korte prior to its dissolution in the year A. D. 1873; that there *does* not now, nor never did exist papers belonging to the copartnership of Henry Korte, because there never was any such copartnership as alleged in said bill, as the complainants well knew.

Defendant denies that any landed property was ever conveyed or turned over to any such copartnership by said Metzger, or
29 that such copartnership was ever formed, or that any goods, wares or merchandise in any store or mercantile house or business *was* ever turned over to any such copartnership as in said bill alleged, or any due bills, notes, evidences of indebtedness, outstanding accounts, or other obligations, which *was* due said Metzger at any time were ever turned over as in said bill set forth, or that they were ever sold and collected and converted into money by any such copartnership, or that they remained in any such copartnership property, or that any such copartnership existed in which they could so remain, or that there was ever turned over, transferred or conveyed to any copartnership or business by the said Metzger any number of live stock or neat cattle, horses, mules, burros, hogs, sheep, or other domestic animals amounting to forty thousand dollars, or any other amount, or that there *was* turned over any farming implements, machinery or other implements of husbandry owned, possessed or used by the said Metzger upon any of his agricultural lands, or in and about the cultivation thereof, or any amount of grain or fruits, or any real or personal property, notes, accounts books, evidences of indebtedness, choses in action, or any other matter which said Metzger, as in said bill alleged, possessed in law or equity, or in which he had any interest, right or title, estate, demand or right of action whatsoever at the formation of any such copartnership as alleged to have been formed in said bill.

Defendant denies that any real estate was ever conveyed by said Metzger to defendant in manner as in said bill alleged, or that said Metzger at any time ever owned any several thousand acres of land upon which there were any several thousand of fruit trees, and he denies that any real estate conveyed by said Metzger to defendant had upon it fruit trees, houses, edifices, barns, stables, granaries, or

other houses or improvements, or any fencing, or that any portion of any land was agricultural land, or that any lands were in a high and profitable state of cultivation, or that any such lands were planted in trees, or that any fruit trees were bearing or yielded any amount of fruit since the formation of any copartnership, or that there ever was any such copartnership as alleged in said bill, or that any such fruit was ever sold and disposed of at any profit and converted and turned into money.

He denies that there were any agricultural lands held under any such pretended copartnership, that any such lands were planted in grain, or that any crops were luxuriant, or that they were sold and converted into money, or that any profits were returned to any such copartnership, or that any annual profits on income from any fruits or grains on any such lands were eight thousand dollars, or any other sum, to any such copartnership, or that there was such a copartnership.

Defendant denying any such copartnership business, also denies that any such business was lucrative, or that any net annual profits amounted to five thousand dollars or any other sum; he denies that any such copartnership as alleged existed for the purpose of raising cattle, or that any such cattle were raised and grazed and kept on any ranches, or that there were thereon any horses, neat cattle or sheep, or that any such neat cattle were profitable, or that any such cattle were sold at sixty thousand dollars, or any other sum, or that defendant ever acted for any such copartnership, or that any such money ever belonged to any such copartnership, or that said Metzger was ever a member of such copartnership, or that any cost of handling any such cattle was paid out of any mercantile business, or that there existed any such cattle or mercantile business.

Defendant avers that the said allegations of said bills are untrue and false in every respect; that the only lands which were ever conveyed from said Metzger to defendant were conveyed in the year 1873 as aforesaid, and upon such conveyance they became ever thereafter the property, and are still the property of defendant; that at the time of such purchase there were no fruit trees whatsoever on any of said lands; that since said purchase defendant at his own cost, and with his own means, has improved said lands, and planted trees on a part thereof, and is receiving some income from the same, but that such income and profit do not concern complainants, they having no interest therein in any manner whatsoever.

Defendant charges that said complainants are by deceit and fraud attempting to create a copartnership which never had any existence in fact, and are thereby endeavoring to wrongfully appropriate a portion of defendant's property, and hard earnings to themselves, knowing as they do that the said Metzger at the time of his death, and for a long time before, to wit: ever since the year A. D. 1873, had no interest or claimed none in any of the property purchased of him and owned by defendant.

Defendant denies that said Metzger at any time, except within the last four years of his death, was feeble, but that up to within

four years of his death he was an active and robust man, and was but sixty-six years old at the time he died; that for about twelve years prior to his death he had retired from all business, and lived a quiet and retired life. Defendant denies that during any such copartnership, which copartnership is also denied, that said Metzger was old or feeble, or that he confided or entrusted to defendant the care and management or control of any copartnership outside of Mora, and he denies that the said Metzger ever attempted to control any such business in a general way, or in any other way, or that there was any business as alleged in said bill which could be controlled by said Metzger in any way.

31 Defendant denies that he sold any fruit or grain produced or grown on any copartnership lands, or that there were any such lands as alleged, or that he ever received any moneys or anything else, or that any money or anything of value was paid, or that any sales were made or any proceeds taken into possession by defendant, or that any proceeds or anything of value were taken to the State of Missouri, or any other State or Territory in the United States, or elsewhere, or deposited in any bank or banks or with any person or persons, or that he loaned out or invested in real estate or anything else either in the name of himself or the name of any one else.

Defendant states that no such copartnership transactions ever happened or took place, and he charges that the complainants well know that said allegations are not true, and defendant denies such and every one of them.

Defendant denying the existence of any such copartnership, also denies that said complainants were ever informed of any such copartnership, or that they believe any of said allegations about copartnership, or anything alleged to have occurred or happened thereunder, or that any such things or matters happened at all.

Defendant denies that either before or since the death of the said Metzger he invested any money belonging to any copartnership, or that any such copartnership ever owned the real estate, notes or obligations, either in the State of Missouri, or any other State, or in the city of St. Louis, or any other city, or that any such copartnership property ever was or is now, in the names of his children, or in the name or names of any other person or persons whomsoever.

Defendant denies that any such investments as in said bill alleged were ever made, neither during the old age of the said Metzger, and while he was infirm and unable to look after and attend to any matter or at any other time, or that they were made without his consent or knowledge or subsequent to his decease, or when it was well known he could or would not live, or that any such investments were made by defendant for the express purpose of cheating or swindling or depriving said oratrixes, or any other person or persons out of any amount or consideration whatsoever.

Defendant states that no such partnership ever having existed, no such transactions could ever have been carried out. He therefore admits complainants' allegations that they do not know the exact character, nature, amount or description of any such investments,

nor when or where made, or for whose benefit, or that the complainants know anything about the matters and things they refer to, either in this or any other respect, and defendant states that
32 said allegations of the said bill are false in every particular and that the complainants well knew the same to be so at the time of the making thereof.

Defendant denies that he is the surviving partner of the said Metzger, or that defendant was in any sense interested in business with the said Metzger, at the time of his death, and he denies that in the capacity of surviving partner or in any other manner he took the possession and charge of any money, notes, bonds, due bills, evidences of indebtedness, outstanding accounts or other choses in action, or that he detains or conceals the same or any part of any such matters or things from said complainants, or from any other persons, or that such matters have any existence, or that they ever had, and he denies the right of complainants to anything which the said Metzger had, at the time of his death in any event or in which he might have been interested in. He denies complainants' right to demand an accounting of defendant for anything, and he denies that he has anything to account for, either to the complainants, or to any other person- as claimed in said bill. He denies that complainants ever asked him to account to them or either of them for anything, as set forth in their bill of complaint, and he avers and states that had such demand been made of him he would have refused to comply therewith, because the complainants have no right to request the same of him.

Defendant denies that he holds or possesses any conveyances or deeds of trust, mortgages, or other assurances or other indebtedness of title on real estate or other property, situate in the State of Missouri, or any other State or Territory of the United States, which were purchased with or on account of money or other property belonging to any copartnership, either in his own name, or the name of any one else, and he denies that any such papers exist, and the allegations of the complainants to their existence, he charges to be an invention, a fabrication, and false from the beginning to the end. He, therefore, states he could not give said complainants any account thereof as they demand in said bill, and he again avers that the complainants are not entitled to any papers or the inspection thereof, so far as this defendant is concerned, nor are they entitled to have him account for any of the papers of the said Metzger for the reasons hereinbefore stated.

Defendant still denying the existence of any such copartnership as alleged in said bill, also denies that in any copartnership business at the town of Mora, there was at the time of the death of the said Metzger, merchandise amounting to ten or twelve thousand dollars, or any other amount, or that such was retained by defendant, or that there was any fruit, grain or chattels on hand being the products of any agricultural land of any copartnership, or that such was the property of any copartnership, or that there *was* any
33 cattle, mules, horses, sheep, hogs or other domestic animals, or farming implements or machinery amounting to any sum

whatsoever, or that defendant had ever taken possession of any such property, or that any such property ever existed; that he, therefore, could not account to said oratrixes or any other persons for the same, or, if requested, that he would have done so on account of the non existence of such matters. He denies that complainants ever demanded an account of any matters as in the said bill alleged, but should they make a request of that nature about any matter concerning the affairs of the estate of said Metzger, defendant should refuse to give them any information, because he is advised that said complainants are not entitled to any information, and that their claim against the estate of the said Metzger is not legal but invalid and void, and without any foundation, and he believes said information to be true, and he further alleges that all the account he could give in any event about and concerning the affairs of said Frank Metzger would be in his capacity as administrator as aforesaid, and that all the property he has belonging to said estate in which he was interested at the time of his death is contained in the inventory on file in the office of the clerk of the probate court of Mora county, and defendant again avers that said allegation of said bill is false, a mere fabrication, and invented for the sole purpose of creating a fiction without foundation or reality.

Defendant denies that there are other kinds, classes or descriptions of property belonging to any such copartnership at the time of the death of said Metzger, in which he and this defendant were jointly interested, amounting to twenty thousand dollars, or any other sum, or that defendant as surviving partner has taken possession of any property, or that he took possession of any property belonging to any such copartnership at the time of the death of said Metzger, and he avers and states that no such copartnership property ever existed, and he is therefore willing to admit that said complainants do not know the exact class, character and description of any such property, nor the value thereof, and he further is willing to admit that they are unable to ascertain the same from the defendant or from any other person, and he avers that the allegation of the complainants' bill as to the existence of such property is false in every particular.

Defendant denies that complainants ever called on him or sought information from him as to said supposed fact, and that defendant refused to account for the same, but had the complainants sought such information defendant would not have furnished the same, because he has no knowledge of such kinds, classes and descriptions of property as complainants refer to in their said bill.

Defendant again denying and protesting that there ever was such a copartnership as referred to in said bill, denies that he is
34 an improper person, or an unfit man to have charge, management or control of any copartnership business or of the property, money, goods, chattels, notes, due bills, choses in action, or other evidences of indebtedness belonging to any copartnership or to defendant as a surviving partner, or to collect in or sell, or dispose of any such property or indebtedness, or to settle up or close up any such copartnership business; but no such copartnership

business having existed as alleged there never had been any necessity for him to care for the same as a surviving partner, or otherwise.

Defendant absolutely denies that he has become in any degree dissipated or reckless in his habits, or that he is in any manner addicted to the drinking of ardent spirits as stated in said bill, or that during any portion of the time he keeps himself under the influence of liquor, rendering him unable to look after his business.

Defendant admits that sometimes he likes to look on the wine when it is red, and occasionally imbibes a little juice of the corn, when good: that it frequently has an exhilarating and reinvigorating effect upon him, but he denies that complainants are in any manner injured thereby, as his social glasses are not taken at their expense, nor have they anything to do with defendant's discretion whether he should drink or not; that they have no right to inquire into his conduct in any manner whatsoever; that defendant had always managed to attend to his own business, and the business of others when intrusted to him, without any particular difficulty, and without the aid or assistance of complainants, or any one else, and that he is now able and competent to attend to his own business, as he believes, in a much more thorough and prosperous manner than complainants or any one else could attend to it for him.

Defendant states that although the annoyance, embarrassments and threats of complainants have been such as to make an ordinary man drink, and even do worse, he has resolved to not allow himself to become drunk, nor to drink any liquors except occasionally for medicinal purposes.

Defendant denies that he is in any manner unfit either mentally or physically to manage, control or do any business intelligently or properly; that he may not possess the intelligence or business sense that complainants do, but he denies the right or authority of complainants to question either his intelligence or his business qualifications, or his affairs, or conduct, as they do not concern them; that they are entire strangers to him and to his affairs.

Defendant denies that he has been squandering or dissipating any sum of money or other property of any copartnership in any improper manner whatsoever, nor has he squandered or dissipated any property of any other kind, not even his own; that complainants have no interest in any property in his hands or under his control, and therefore he is not required to protect any interest of complainants, and that they will not be in the least in-ured or prejudiced by what defendant may or may not do.

Defendant again denying any such copartnership as alleged in said bill, also denies that he has allowed to go to ruin or become lost or destroyed any amount of personal property of any copartnership, or of any one else, or even his own, or that any such thing ever happened at all; that no such partnership property ever existed, and it therefore never came to his possession, or that he is a surviving partner as to it, or that it was ever his duty to care, manage and control or account to said complainants.

Defendant denies that he has been disposing of, concealing, hiding, or removing any property belonging to any such copartnership from the Territory of New Mexico, or from the jurisdiction of this or any other court, and he also denies that he ever disposed of, concealed, hid or removed any other property whatsoever, not even his own, and he charges that said complainant well knew that the said statements are false, and he admits that such property cannot be found or reached by the process of this court for the reason it is not in existence, nor never was, nor did any such things as alleged in said bill ever happen.

Defendant denies that he ever gave out or threatened that he intended to sell off or dispose of the whole of said property, or any part thereof, because there is no such property, or that he would or could convert the same into money, or other evidences of indebtedness, or keep, hide, conceal or otherwise dispose of the same, so that complainants would be unable to obtain any portion of the same by the powers of any court.

Defendant denies that any such notes ever existed as charged in said bill, and consequently no statute of limitation would or could affect them; he denies that any persons whatsoever owe anything to any such copartnership, or that any such persons became financially embarrassed, or have become insolvent; he denies that there is any danger that any indebtedness will become lost to said oratrixes; that there is nothing due them or either of them, and their anxiety and fear is a sham, and that they know there is no such indebtedness.

Defendant denies that he is afraid that complainants would gain some information of any such accounts or indebtedness because they in truth and in fact have no existence, or that he would
36 be compelled to account for them. Defendant charges that said complainants know that their allegations that defendant has given out and stolen and threatened that he will suffer any property whatsoever or indebtedness to become dissipated, lost and destroyed, rather than complainants should obtain any portion of the same, or any benefit therefrom, are utterly untrue and false; that it would be impossible for him to carry any such threats into execution, or that complainants would be irreparably or otherwise injured and damaged.

Defendant positively denies that he ever attempted to remove or secrete any property of any kind, not even his own, and denies he ever attempted to do anything as charged in said allegations; that there was such property as described, or that he attempted to deprive complainants of anything which rightfully belonged to them, or that he has anything belonging to them, or in which they are interested; that all of said matters are new to him and the charges are also to complainants.

Defendant denies that he has hidden any of his individual property but states the fact to be that his property can be reached by any process of any court in this Territory, but he avers that there is no person who has any claim against him except as incidental to this suit, and especially have the complainants any claim against him

which is just or valid at law or in equity, and that therefore there is no necessity for any court to issue process against him.

Defendant positively states that he has plenty visible and cognizable property within this Territory out of which to pay complainants any damages they could suffer or have suffered on account of any acts, doings or threats of defendant, as charged in said bill, but he denies ever having made any such threats, and he denies that there was any neces-ity for making them.

Defendant denies that complainants ever suffered anything from any acts of defendant, and *de* denies that he has not sufficient property within the jurisdiction of this court to repay them, and states the fact to be that it does not require any money or property to pay complainants anything or any loss by them suffered, or sustained as in said bill alleged.

Defendant denies that complainants are entitled to any protection, or that any such property as mentioned has to be protected, or any property to be saved to, complainants, or that there is, or exists any property of any kind in defendant's possession or within his knowledge which complainants have the slightest interest in or right to, and he therefore denies the right for them to ask a receiver, or that there is anything to receive, except in the imagination of complainants, or that there is any such partnership property or busi-
37 ness for a receiver to take charge of, or that there ever was, or that there *was* ever any lands, goods, chattels, merchandise, notes, bonds, bills, accounts, book accounts, or any other evidence of indebtedness, or that defendant has in his possession or knows of any such property, or matters in which said Metzger had any interest, to which complainants have any claim in law or equity, or otherwise.

Defendant, denying the relationship which complainants allege to exist, also denies that he has, or that there are such matters which he holds as surviving partner. He denies absolutely having the possession of any of the things referred to in said allegation.

Defendant denies that he is doing or has ever done any matter or thing which is contrary to equity and good conscience as alleged in said bill, or that he has done or caused to be done any matter or thing tending to any wrong and injury to complainants, but that he avers the fact to be that the institution of this suit by complainants without any legal or equitable foundation is contrary to equity or good conscience and was for the sole purpose to annoy defendant with unnecessary litigation. Defendant also denies that complainants are entitled to any relief in a court of equity or any other tribunal as to any of the matters prayed for, or to any discovery or to anything else asked for in said bill.

Defendant charges that there is another suit pending in this honorable court, between said oratrixes and this defendant, in which this defendant is defending, involving the same subject-matter, and that these multiplicity of suits are brought to harrass and to annoy defendant, and compel him if possible, to purchase his peace with complainants.

Defendant denies each and every material allegation in said bill of complaint not already specifically denied.

Defendant having now fully answered said bill, or such parts thereof as he is advised is material for him to make answer unto, he prays to be hence dismissed with his reasonable cost in this behalf in and about this suit expended.

PRITCHARD & SALAZAR,
LOUIS SULZBACHER,
Solicitors for Defendant.

And afterwards, to wit: on the 20th day of June, 1887, there was filed in said clerk's office a replication, which said replication is in words and figures as follows, to wit:

38 In the District Court of the County of Mora.

DOLORITAS MARTIN DE CORDOBA, JOSE Manuel Cordoba, Josefita Martin de Duran, Jose Manuel Duran, and Isabelita Martin, Complainants, *vs.* HENRY KORTE, Defendant.	In Chancery. No. 906.

The replication of Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josefita Martin de Duran, Jose Manuel Duran, and Isabelita Martin, complainants, to the answer of Henry Korte, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto, saith: that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law, to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true: all which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

T. B. CATRON,
JOHN D. W. VEEDER,
Solicitors for Complainants.

And afterwards, to wit: on the — day of ——, A. D. 188–, cause No. 898, entitled Doloritas Martin *et al. vs.* The Estate of Frank Metzger and Henry Korpe, was consolidated with cause No. 906, and thereupon the following papers and documents in cause 898 were filed in and became part of the record of case No. 906, and are in words and figures as follows, to wit:

Petition.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

In the Probate Court of the County of Mora, at the May Term, A. D. 1885.

Before the Honorable Feliciano Guiterrez, judge of the probate court of said county.

And now comes Doloritas Martin, Josefita Martin and Isabelita Martin in their own proper persons, and by their attorneys,
39 Fernando Nolan and John Veeder, and move the court to allow them to make proof that they are the natural children and descendents of Frank Metzger, who departed this life the — day of February, 1885, leaving no will; that the said Frank Metzger left no legitimate children, and that they are therefore entitled to share in the distribution of said estate.

DOLORITAS MARTIN,
JOSEFITA MARTIN,
ISABELITA MARTIN,
By their attorneys, FERNANDO NOLAN.
JOHN D. W. VEEDER.

Affidavit for Appeal.

In the Probate Court of Mora County, May Term, A. D. 1885.

In the Matter of the Proof of Heirship of DOLORITAS MARTIN, JOSEFITA MARTIN, and ISABELITA MARTIN to the Estate of Frederick Metzger, Deceased.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

John D. W. Veeder, being duly sworn, says that he is the agent of Doloritas Martin, Josefita Martin and Isabelita Martin, the appellants in the above-entitled cause, and that such appeal is not taken for the purpose of vexation or delay, but because this affiant believes that the appellants are aggrieved by the judgment and decision of the court.

JOHN D. W. VEEDER.

Subscribed and sworn to before me this 8th day of May, A. D. 1885.

[SEAL.] AGAPITO ABEYTIA, JR.,
Probate Clerk.

Order Allowing Appeal.

In the Probate Court of Mora County, May Term, 1885.

In the Matter of the Proof of Heirship of DOLORITAS MARTIN, JOSEFITA MARTIN, and ISABELITA MARTIN to the Estate of Frederick Metzger, Deceased.

And now comes Fernando Nolan and John D. W. Veeder, attorneys for the said Doloritas Martin, Josefita Martin and Isabelita Martin, and file their affidavit and bond for an appeal in the above-entitled cause, as required by law.

And the court considering that the said parties are entitled to an appeal in said cause, because they have taken it at the same term at which the judgment and decision in said cause was rendered, hereby approves the said bond, and allows and grants to the said parties an appeal to the district court.

[SEAL.]

F. A. GUITERREZ,
Probate Judge.

AGAPITO ABEYTIA, JR.,
Probate Clerk.

Bond.

Know all men by these presents; that we, Isabel Martin, as principal, and Rafael Romero and Viviana Martin, as her securities, are held and firmly bound unto Henry Korte, administrator of the goods and chattels of the estate of Frederick Metzger, deceased, in the sum of two hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 8th day of May, A. D. 1885.

The condition of the above obligation is such, that whereas, upon an application of Doloritas Martin, Josefita Martin and Isabelita Martin to the probate court of Mora county, asking to be allowed to make proof that they were the natural children of Frederick Metzger, and that the said Frederick Metzger had no legitimate children and therefore they were entitled to share in the distribution of said estate, which said application was allowed by the said court and proof offered of such fact, judgment was rendered by the said probate court against the said Doloritas Martin, Josefita Martin and Isabelita Martin, and, whereas, they are aggrieved by the judgment of the said court, and have taken an appeal to the district court of said Mora county, at the next regular term thereof in September, A. D. 1885.

Now therefore, if the said Doloritas Martin, Josefita Martin and Isabelita Martin, shall prosecute their appeal with due diligence to a decision in the said district court, and if the judgment or decision appealed from be affirmed, or the appeal be dismissed, shall perform the judgment of the district court, and shall pay the costs and dam-

ages that may be adjudged against them upon their appeal, then this obligation to be null and void, otherwise to remain in full force any effect.

ISABEL MARTIN. [SEAL.]
RAFAEL ROMERO. [SEAL.]
her
VIVIANA x MARTIN. [SEAL.]
mark.

Aprobado hoy 8 de Mayo, 1885.

F. A. GUITERREZ,
Juez de Pruebas.

41 *Transcript.*

Probate Court, County of Mora, May Term, A. D. 1885.

DOLORITAS MARTIN, JOSEFITA MARTIN, ISABELITA MARTIN
vs.
THE ESTATE OF FRANK METZGER, Deceased, and HENRY KORTE, Administrator.

Be it remembered, that on the seventh day of May, A. D. 1885, the above-entitled cause came on to be heard upon the petition of the said Doloritas Martin, Josefita Martin and Isabelita Martin, alleging that they were the natural children of Frank Metzger, deceased, and that deceased left no legitimate children, and praying that they be adjudged to be heirs of the said Frank Metzger, and entitled to share in the distribution of the said estate.

Thereupon testimony was allowed to be introduced on the part of the said Doloritas, Josefita and Isabelita Martin, and also on the part of the said estate and Henry Korte, administrator, the latter introducing to the court a writing made before Vicente Romero, former probate judge of said county, by which it was claimed on his part that the wife of the said Henry Korte, Juana Metzger, was made the sole and legitimate heir of Frank Metzger, deceased.

And after hearing the testimony on behalf of both parties the court decided as follows:

Ahora la corte en su decision en el asunto de la legitimacion de Juana Metzger sostiene la escritura hecha por el Hon. Vicente Romero, finado pues si dicho escritura no esta en conformidad con el provisto por ley no es para esta corte el anulalo.

Whereupon the said Doloritas, Josefita and Isabelita Martin, by their attorneys, made their motion for an appeal to the district court of said Mora county, and afterwards, to wit: on the 8th day of May, A. D. 1885, filed their affidavit and bond as required by law and the same was approved by the court, and an order entered granting said appeal.

F. A. GUITERRES.
Juez de Pruebas.

TERRITORY OF NEW MEXICO, }
County of Mora. }

I, Agapito Abeyta, clerk of the district court of Mora county, hereby certify that the foregoing is a true and correct tran-
42 script of the proceedings had in the above cause, together with the decision of the court thereon.

Witness my hand and the seal of said court this 9th day of September, A. D. 1885.

[SEAL.]

AGAPITO ABEYTA, JR.,
Clerk Probate Court.

Motion for Leave to File Amended Petition.

District Court of Mora County, April Term, 1886.

DOLORITAS MARTIN *et al.*
vs.
THE ESTATE OF FRANK METZGER, Deceased, and HENRY KORTE, Administrator Thereof.

And now comes the said plaintiffs by T. B. Catron and John D. W. Veeder, their attorneys, and ask leave of the court to file in said cause an amended petition setting forth the facts more specifically, and joining with said plaintiffs their husbands, and with the said defendant, Juana Korte.

T. B. CATRON,
JOHN D. W. VEEDER,
Solicitors for Complainants.

Amended Petition.

District Court, County of Mora, September Term, A. D. 1885.

DOLORITAS MARTIN *et al.*
vs.
THE ESTATE OF FRANK METZGER and HENRY KORTE, Administrator.

To the Hon. William Vincent, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof:

Your petitioners, Doloritas Martin and Manuel Cordoba, her husband, Josefita Martin and Manuel Duran, her husband, and Isabelita Martin, all residents of the county of Mora, in the Territory of New Mexico, by leave of the court first had and obtained, file this, their amended complaint, and show unto your honor that they, the said Doloritas, Josefita and Isabelita Martin, are natural children of the late Frank Metzger, sometimes called Francisco Metzger, who departed this life in the month of February of this present year, and of Viviana Martin. That said Frank Metzger, when he died, was a single man, and never had

been married; that at the time of his death he left him sur-
43 viving no legitimate children or descendants, and no other lawful heirs than your petitioners, Doloritas, Josefita and Isabelita Martin, and left no ascendants him surviving; that the said Frank Metzger died intestate, leaving as your petitioners are informed and believe a large estate in the Territory of New Mexico and at other places; that one Henry Korte, a resident of the said county of Mora, in the Territory aforesaid, who is the husband of one Juanita Korte, a spurious and bastard child as your petitioners are informed and believe, of the said Frank Metzger, has taken out letters of administration on the estate of the said Frank Metzger, and claims that the said Juanita is the sole heir of the said Frank Metzger.

Your petitioners charge that they are the only legal heirs of the said Frank Metzger, and they pray that proofs of their heirship may be taken, and upon a hearing of their petition and the necessary proofs, they may be adjudged and decreed to be the lawful heirs of the said Frank Metzger, and entitled to receive the distribution of the proceeds of the said estate.

her
DOLORITAS x MARTIN.
mark.
her
JOSEFITA x MARTIN.
mark.
ISABELITA MARTIN.

TERRITORY OF NEW MEXICO, }
County of Mora, } *ss.*:

On this 12th day of September, 1885, personally appeared before me Doloritas, Josefita and Isabelita Martin, who being duly sworn upon their oath, say: that they are the petitioners named in the foregoing petition by them above subscribed, that they have heard the same read and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters they believe them to be true.

[SEAL.] R. W. WEBB, *Clerk.*

Motion to Strike Out Amended Petition.

District Court, Mora County, March Term, A. D. 1886.

In the Matter of DOLORITAS MARTIN *et al.*, Originating in the Probate Court of Mora County.

And now comes the said Henry Korte, administrator of the estate of Frank Metzger, deceased, and moves the court to strike said amended petition from the files for the following reasons:

44 (*a.*) That there was no leave given to file any amended petition.

(1.) That said amended petition sets out an entire new cause of action than the original petition filed in the probate court.

(2.) That said amended petition adds new parties to the litigation.

(3.) That said amended petition contains names of parties who did not appeal from the decision of the probate court.

(4.) That the said petition is upon a matter foreign to the matter alleged in the original petition.

(5.) That the matters contained in the amended petition as to Juana Metzger are primarily cognizable in a probate court.

(6.) That said petition does not set up any legal claim of which the court could take notice.

And for other good and valid reasons appearing upon the face of said petition, and not making all persons in interest parties to the suit in controversy.

PRITCHARD & SALAZAR,
LOUIS SULZBACHER,
Attorneys for Henry Korte.

And afterwards, to wit: on the 28th day of June, A. D. 1887, there was filed in said clerk's office the following application for appointment of master, in words and figures as follows, to wit:

In the District Court of the Fourth Judicial District.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } Chancery.

Upon application of John D. W. Veeder, Esq., solicitor for complainants in the above-entitled cause, made before me this 28th day of June, 1887, asking for the appointment of a master to take and report the testimony in the above-entitled cause, and it appearing to the court that the said cause is not at issue: it is hereby ordered that R. M. Johnson, be appointed master in said cause, and the same is hereby referred to him to take the testimony and report it to the court, and his conclusions of law thereon.

ELISHA V. LONG,
Chief Justice, etc.

Las Vegas, N. M., June 28, 1887.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held in and for the county of Mora, at the court-house of said county, on
45 the second Monday in October, 1887, the same being Monday, October 10th, 1887, for the trial of causes arising under the laws of the Territory.

And afterwards, to wit: on Wednesday the 12th day of October, A. D. 1887, the same being the third day of said term, the following among other proceedings were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906.

On motion of said complainants by their solicitor, Mr. Catron, it is ordered by the court that said foregoing cause stand continued until the first day of the next regular term with leave to said parties to take further proofs herein until the first day of the next term.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held in and for the county of Mora, at the court-house of said county, on the first Monday of April, 1888, the same being Monday, April 2nd, 1888, for the trial of causes arising under the laws of the Territory.

And afterwards, to wit: on Tuesday, April 3rd, the same being the second day of said term, the following proceedings were had to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE.

Comes now Messrs. Pritchard and Sulzbacher, and appear for the defendant herein.

And afterwards, to wit: on the same day the following among other proceedings, were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906.

Come the parties and the court now extends the time in which to complete the proofs until the first day of the next term of the court.

At a regular term of the district court of the fourth judicial district, begun and held in and for the county of Mora at the court-house in said county, on the first Monday of April, 1889.

46 And afterwards, to wit, on Tuesday, April 2d, A. D. 1889, the same being the second day of said regular term of court, the following among other proceedings were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906.

Now comes the parties in the above-entitled cause, and it appearing to the court that R. M. Johnson, heretofore appointed special master herein, is unable to act, it is ordered by the court that John H. Koogler be, and he hereby is appointed special master in the above-entitled cause, to take the proofs and report the same with his conclusions of law thereon, with all convenient speed.

And afterwards, to wit, on Monday, April 8th, the same being the seventh day of said term, the following among other proceedings were had, to wit:

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE. } No. 906.

Now come the complainants in the above-entitled cause and suggest to the court the death of the said defendant, Henry Korte, who was one of the defendants in said cause, and it appearing that said Henry Korte has departed this life since the last continuance of said cause, and it further appearing to the court on the suggestion of said complainants that Agapito Abeyta, Jr., and Juanita Metzger de Korte, the last-named being the widow of said deceased, have been appointed and are acting as administrators with the will annexed, of said Henry Korte, and as his legal representatives; and it further appearing from said suggestions of said complainants that the said Henry Korte left him surviving the following-named children of himself, who are his only descendants, to wit: Annie Naeglin, who is the wife of William Naeglin; Charles Korte, Frank Korte and Edward Korte, the last three of whom are infants under the age of twenty-one years, all of whom are residents of the said county of Mora: It is therefore ordered, adjudged and decreed that the said Agapito Abeyta, Jr., and Juana Metzger de Korte, as administrators, with the will annexed, and as the legal representatives of Henry Korte, deceased, and the said Annie Naeglin and William Naeglin, as her husband, the said Charles Korte, Frank Korte and Edward Korte, as his children, heirs and descendants, be and they hereby are made parties defendant in said cause in lieu of said Henry Korte, deceased, and that summons issue to the said newly made defendants, requiring them to enter their appearance in said cause on or before the first day of the next regular term of this court.

47 And afterwards, to wit, on April 8th, 1889, there *was* issued out of said clerk's office a subpœna and seven copies.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, began and held in and for the county of Mora, at the court-house of said county, on the second Monday of October, 1889.

And afterwards, to wit, on October 14th, 1889, the following among other proceedings were had, to wit:

DOLORITAS MARTIN *et al.*
vs.
JOSEFITA MARTIN DE CORDOBA *et al.* }

It appearing to the court that the said Agapito Abeyta, Jr., Juana Metzger de Korte, Annie Naeglin, William Naeglin, Charles Korte, Frank Korte and Edward Korte, have each been duly served with a subpœna and summons in said cause to appear and answer; and it further appearing to the court that the said Charles Korte, Frank Korte and Edward Korte are infants under the age of twenty-one

years: it is ordered and decreed by the court that George W. Pritchard, Esq., be and he hereby is appointed guardian *ad litem* for said infants, and the said Pritchard having accepted said appointment, he is in open court duly sworn as such; thereupon the said George W. Pritchard, as solicitor, entered the appearance of the said defendants, Annie Naeglin and William Naeglin, and of the said infants by him as their guardian *ad litem;* and it further appearing to the court that since the last continuance of said cause the said Juana Metzger de Korte has departed this life, and that said Agapito Abeyta, Jr., has resigned his position as administrator of the estate of Henry Korte, and that the said Annie Naeglin has been appointed administrator in their stead, it is ordered and decreed that she be made a party defendant as administratrix with the will annexed to said bill; and it appearing that the said defendants, Annie Naeglin and William Naeglin as her husband, and Charles Korte, Frank Korte and Edward Korte are the sole and only heirs of said Juana Metzger de Korte, it is ordered and decreed that as to the interest of said Juana Metzger de Korte individually in said cause, the same proceed against the said heirs who are already parties to the same; and thereupon the said George W. Pritchard, as solicitor, entered his appearance in said cause for said Annie Naeglin as such administratrix, and for all of the other defendants in said cause.

ELISHA V. LONG,
Chief Justice, etc.

Dated October 11th, 1889.

And afterwards, on April 28th, 1890, there was filed in said clerk's office a stipulation in words and figures as follows, to wit:

48 In the District Court, Fourth Judicial District, Territory of New Mexico.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE, ETC., *et al.* } No. 906.

And now come the said complainants by their solicitors, and ask leave of the court to enlarge the time for taking testimony in the above-entitled cause, ten days from the date hereof, to enable complainants to put in rebuttal testimony, which said motion being heard, it is thereupon ordered, adjudged and decreed that the time asked for be given, and the same is hereby enlarged for a period of ten days from this date.

And afterwards, to wit: on the 14th day of October, 1889, there was filed in said clerk's office a stipulation, which said stipulation is in words and figures as follows, to wit:

In the District Court for the County of Mora, in the Territory of New Mexico.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE *et al.* } No. 906.

It is hereby stipulated and agreed by and between the parties respondent and complainant in said cause that the answer heretofore filed in said cause on behalf of the defendant, Korte, now deceased, be and the same is hereby adopted and taken as the answer of the defendants who have been substituted in his stead as his heirs in said cause, and that said cause shall proceed and be tried the same as if said answer had been rewritten in full in the name of the defendants who were substituted or made parties in lieu of said Henry Korte after his death; and the replication thereto shall also stand as a replication to said answer, as if it had been made for and on behalf of the defendants so made parties in lieu of and after the death of said Henry Korte.

GEORGE W. PRITCHARD,
Solicitor for Defendants.

T. B. CARTON,
JOHN D. W. VEEDER,
Solicitors for Complainants.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico, begun and held in and for the county of Mora, at the court-house in said county, on the first Monday of October, 1890, the same being Monday, October 5th, 1890, for the trial of causes arising under the laws of said Territory.

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DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE *et al.* } No. 906.

It is ordered that this cause be and the same is hereby continued.

At a regular term of the district court of the fourth judicial district of the Territory of New Mexico begun and held in and for the county of Mora, at the court-house of said county, on the first Monday in March, A. D. 1891, the same being Monday, March 2nd, 1891, for the trial of causes arising under the laws of said Territory.

And afterwards, to wit: on Thursday, March 5th, 1891, the same being the fourth day of said term, the following proceedings were had, to wit:

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE *et al.* } No. 906.

It is hereby ordered by the court that the above cause be and the same is hereby continued.

And afterwards, to wit: on May 5th, 1891, there was filed in said clerk's office the testimony and the report of the special master in said cause, in words and figures as follows, to wit:

TESTIMONY.

MARIA MARTA, DOLORITAS DE, and HER HUSBAND *et al.* *vs.* HENRY KORTE.	No. 906. Chancery. Mora County.

Evidence Taken before A. B. Sager, by Agreement of the Parties. R. M. Johnson, Master.

ARTHUR MORRISON, being sworn, says:

Q. State your name and age.

A. My name is Arthur Morrison. I have resided in Las Vegas and have lived here thirty-eight years. Am 66 years of age.

Q. Are you acquainted with Frederick Metzger?

A. I am.

Q. How long have you known him?

A. Since 1849.

Q. Where did he reside during the time you knew him, and what was his business?

50 A. I knew him for a short time in Las Vegas, and since in Mora. In the latter part of 1849, he removed from Vegas to Mora and has resided there ever since. His business was at first a mercantile business. From that his business increased and he engaged in buying stock. He then acquired several ranches for the purpose of stock-raising and agricultural purposes. He had contract with the Government for furnishing supplies, and during all the time was carrying on a general mercantile business in Mora.

Q. Do you know if he is dead, and if so, state when he died?

A. He died during the month of February, 1885, at Mora.

Q. Are you acquainted with the plaintiff and defendants in this case?

A. I am.

Q. How long have you known them?

A. I knew Viviana for the last thirty-five years; I knew Josefita and Isabela Martin since they were small children. I knew Henry Korte from the time he got married to an adopted daughter of Frank Metzger's.

Q. What do you mean by saying Korte's wife was an adopted daughter of Metzger's?

A. Because the child after its birth was a daughter of a woman who lived with Frank Metzger, and was not married to him at that time. I mean by the child, Korte's wife.

Q. Do you know who was the mother of Korte's wife? If so, state.

A. Yes, sir; her name was Appelonia, but her other name I have forgot. I always knew her by that name.

Q. Do you know whether or not she was a married woman at the time of the birth of Korte's wife, her daughter? If she was, state, if you know, who was her husband, and if he was at that time living.

(Mr. Pritchard on the part of the defendant objects, the certificate on the part of marriage being the best evidence, and also the question being twofold in its character.)

A. I know she was a married woman at the time. I knew her husband personally. His name was Bernardo Martin, and he was at the time of the birth of the child working for Frank Metzger.

Q. State, if you know, what relationship, if any, existed between the complainants, Doloritas Martin, Josefita Martin, Isabelita Martin, and Viviana Martin?

A. These three children named were Viviana Martin's daughters.

Q. Do you know where Viviana Martin and her said three children lived at the time of their birth? If so, state.

51 A. They lived at the time on a ranch about six or seven miles from Mora, then called the Cevolla ranch, which then was the property of Mr. Metzger.

Q. State, Major Morrison, if you know the correct name of Metzger, and also what name he generally went by. If so, give the names.

A. Since I knew him he always went by the name of Frank Metzger, in Spanish Francisco, and if his name is Frederick Metzger I did not know it until after his death. I never heard him called Frederick before.

Q. State, if you know, whether or not Frank Metzger was a married man.

A. I never knew him to be a married man, I never knew he was married.

Q. What were you relations with Mr. Metzger, and state whether or not you frequently met with him, and *and* conversed with him, and when?

A. My relations with him were very intimate. Years ago I went very often to Mora, and during my stay there always remained at his house, and he did the same thing, remaining at my house at Las Vegas.

Q. State if you know if Viviana Martin was a married woman at the time of the birth of said three children.

A. She was not.

Q. If you know, state in whose house she was living at the time of the birth of said children.

A. The house and the ranch she then lived in was the property of Mr. Metzger.

Q. If you know of your own knowledge, or from any conversation from Frank Metzger, who was the father of Doloritas Martin, Josefita Martin and Isabelita Martin, state what you know and what was the conversation.

(This question is objected to, because it solicits an answer as to a matter of which the witness would have no knowledge, and because Frank Metzger's statements or admissions to witness would be of the same character.)

A. In conversation had frequently with Frank Metzger in reference to his household and family matters, he told me that the three children of Viviana Martin cost him a great deal of money to maintain them. There was hardly a week or day going past without he had something to provide for them, and conversations of that nature kept on frequently.

Q. What did he say to you, if anything, about their being his children, or as to who was the father of them?

(Mr. Pritchard objects to the question.)

A. I don't recollect that he ever told me in a direct way, that they were his children, but in an indirect and joking manner he told me that he had to provide for them.

52 Q. Do you know what three children he was talking about?

A. He then had reference to three children of Viviana Martin—Doloritas, Josefita, and Isabelita.

Q. State, if you know, how Viviana and the said three children obtained their support.

A. She was at that time living at the Geillo ranch with the children, taking care of the ranch the best she could, and was maintained by Mr. Metzger for her living. This Mr. Metzger would go out every week to the ranch, and stay several days, and come back to Mora again, and sometimes would stay even a week at the ranch.

Q. State, if you know, either from your own knowledge or from conversation with Mr. Metzger, whether or not at that time Metzger was living or cohabitating with Viviana.

A. From my own knowledge I cannot say that I do. He never told me in a direct manner that he did, but in a playful manner.

Q. Were you ever at the ranch with him?

A. Yes, sir.

Q. Did you ever stay over night at the ranch?

A. Yes, sir.

Q. State whether or not, if you know, if Metzger stayed in the room with her over night at that time.

A. I know that Metzger slept in the same room with this woman, Viviana. There were several beds in the same room, however, and by whom they were occupied I do not know. I have seen Metzger go into the bed, and I went to the next room to go to bed also, and what happened afterwards I do not know.

Q. State how many rooms were in the house.

A. There were three living rooms in the house, two occupied as bed-rooms and some other rooms as store-rooms. When I was there I occupied one of the bed-rooms.

Q. Was Metzger there at the time you were?

A. Yes.

Q. Do you know anything about Metzger having made a conveyance of his property in the name of Henry Korte, either of your own knowledge or from conversation with Metzger when Henry Korte was present?

A. Yes, sir.

(This question objected to.)

Q. Now, state what you know.

A. I don't recollect the exact date or time, but Metzger and Henry Korte came over to Las Vegas and stopped at my house. Among other thing- he related to me he was under embarrassment about a certain note he had to pay, and he had paid it once before. That he was very much hurt about paying it, and that it amounted
53 to eight or nine thousand dollars over his property in Henry Korte's name, in order to save himself. That was the material part of the conversation. There were more conversations in regard to it. He told me he would not give up his business and his interest in the property, but would remain as a silent partner in the property.

Q. Did he state in what name the business would be carried on?

A. He stated that the business would be carried on in the name of Henry Korte.

Q. At that time do you know whether the business and property had been transferred to the name of Henry Korte, or was he simply contemplating it?

A. I am not very positive of that fact; if they were contemplating it, or whether it had already been made, but it appears to me that it had already been done from the conversation. Metzger told me that he still retained interest both in the business and property. He was the head man and manager of it; he retained his interest as silent partner. Korte was present at the time, but I don't know that he paid any attention to our conversation.

Q. State whether or not the conversation you have just referred to was — a sufficiently loud tone of voice to enable Korte to hear it.

A. Yes, sir; the conversation was in German, and he certainly could hear it. We all three spoke German.

Q. State if at Mora you had any conversation with Metzger on the same subject in the presence of Korte, and if so, state the conversation.

A. It was about a month and a half after the conversation last referred to. I went over to Mora, stopped as usual at Metzger's house, and I believe my business kept me there four or five days at that time. The first evening after supper we came out and sat around the store—Frank Metzgar and myself and Henry Korte—close by but back of the counter. After several conversations about matters and things, I asked Mr. Metzger how he got along with that note, and he replied that he thought he had better pay it and be done with it; yet, as you know, I turned over to Henry my business, but if the business owes to you one thousand dollars, you come to Frank Metzger and Frank Metzger will pay it. About that time Korte was present, and heard all that, and about that time some one came in and called him, and he went back of the counter and into the other room.

Q. State, if you know, how the business at that time was being carried on. I mean all the business that was formerly carried on by Frank Metzger.

A. I know that during my presence, which was often and frequent in Mora, no transaction was made connected with ranching or any-

thing without Henry would take the advice and permission of Metzger in doing it.

54 Q. State, if you know, after that time, that is, after the conversation you referred to as had, what relation or connection Frank Metzger had with the business and property he formerly had and carried on, and if you know who managed and conducted that property and business.

A. From my own knowledge I know Frank Metzger to be always at the head of the business at that time.

Q. In what name, if you know, was the business, mercantile, ranching, cattle-raising, or whatsoever other business it was which had been formerly carried on by Frank Metzger, conducted and carried on.

A. Some time after it was carried on in the name of Henry Korte; Henry Korte was the business name, but my transactions were always with Metzger.

Q. Do you remember what name was being used at the time you had the conversation at Mora, which you last mentioned?

A. I don't recollect. Shortly after that I know the business was carried on in the name of Henry Korte.

Q. Do you know whether or not, at the time Metzger made the conveyances, into the name of Henry Korte of the business and property, there was any considerations passed between him and Korte for the conveyances?

A. I don't know anything about it.

Q. Do you know of your own knowle lge, or from any conversation with Metzger in the presence of Korte, and in his hearing, what interest, if any, Metzger retained in the property and business, which was afterwards carried on in the name of Henry Korte? If so, state.

A. I don't know and I don't recollect of Metzger ever telling me about it. He told me he retained his interest but I don't recollect how much it was.

Q. State whether or not, if you know Metzger and Korte were partners in the property and business, which was held and carried on in the name of Henry Korte; whether you know it of your own knowledge or from conversations with Korte, or with Metzger in the presence of Korte.

A. Yes, sir. Korte told me several times that his father-in-law, Frank Metzger, was his partner. I think Metzger told me "We are in partnership together, me and Henry," in the presence of Henry, that is my best recollection as what Metzger told me.

Q. Can you state about the time it was when you had your conversation with Metzger in Las Vegas, which you first referred to?

A. It was in the summer of 1873.

Q. If you know, state what was the firm name of the copartnership composed of Metzger and Korte after that time.

55 A. I know that the partnership business was under the name of Henry Korte.

Q. You have referred to two conversations had by you and Frank Metzger in the presence of Henry Korte, one at your house at Las Vegas, the other at his house at Mora. State whether or not Henry

Korte at either of those conversations dissented from, or made any objections to what Frank Metzger made to you, or denied that it was the truth stated.

A. He never denied, dissented or objected to what Mr. Metzger said at that time.

Cross-examination by Mr. PRITCHARD:

Q. Where were you living when Frank Metzger died?

A. I was living here at Las Vegas.

Q. How long previous to his death had you been in Mora?

A. I was there about three months before his death, according to my best recollections. I saw him over there.

Q. Was that the time he spoke to you about his partnership?

A. No, sir.

Q. How long previous was it to that that you had seen Frank Metzger?

A. I had seen him two times, three times, perhaps four times every year.

Q. How long previous to his death was it that he had spoken to you about his partnership with Henry Korte?

A. I don't recollect the last times, but he spoke to me several times in regard to it.

Q. Can you tell me within a year of the time he spoke to you about his business connection with Henry Korte?

A. In 1880, after returning from the States I went to Mora and remained two or three days, I asked how he got along, and so on. He told me all right; he was getting along very well. But he was growing very tired of business, he was satisfied that Henry was all right, and was well satisfied with Henry. That was the drift of his conversation.

Q. How long previous to 1880 was it that he last spoke to you about his partnership, or his business with Henry Korte?

A. I can't recollect the dates.

Q. Did he speak to you within one year, two years, three years, four years, or five years about his partnership previous to 1880?

A. Yes, sir.

Q. What years?

A. I don't know, I cannot tell the year, he spoke several times, most every time I came over.

Q. The last time he spoke to you about his business was 1880? Is that true?

A. No, sir.

56 Q. Didn't you just say that the last time he spoke to you about his partnership in business was in 1880, after your return from the States?

A. I said that the last time he spoke to me about the partnership was in 1880, but I spoke to him afterwards, before his death many a time about his business; in fact, we spoke about it whenever we met.

Q. How long before his death was it that you spoke to him about his business, I mean the last time?

A. According to my recollection it was in the fall term of the Mora court, in 1884, when I was there five or six days.

Q. Is that as definite as you desire to make it?

A. I may have seen him after that, but I am not certain.

Q. Did you know of your own knowledge that he was in any business after the time he spoke to you about his business, at the time of his death?

A. I will state that I saw him over there at Mora in the same capacity as he always was, before his partnership took place. I wish to say and say it, that he attended to the business, sold goods, took the money, paid out money, gave orders sometimes to go to the ranch, cattle ranch, or the Buena Vista ranch, and I heard him say furthermore to Henry "You must do so and so, do that and the other."

Q. Do you mean to say that he could not have done what he did do, and say what he did say without being an owner or partner in the business, and is this the only evidence you have of his partnership interest?

A. I considered him at that time, from the way he carried on the business, to be very much interested from the care he took in the business, or he would not have done as he did do.

Q. Then, after all, it's true is it not, that you judged him to be a partner, by seeing him around and looking after the business you referred to?

A. I judge it from that, and I judge it from the first conversation we had in which he told me he was a silent partner.

Q. That first conversation you refer to was about some ten years previous, was it not?

A. It may have been, and it may have been less.

Q. Were you in Mora at the time of Metzger's death?

A. No, sir.

Q. Do you know of your own knowledge that he was in business at that time?

A. I will state from the fact that he was a partner, he was in business all the time up to his death. I will state again that he did not show the same energy in the latter part of his life, some three or four years [illegible]t he did before.

Q. Do [illegible] know personally that he was Korte's partner at the time of his death?

57 A. I only know what I have stated before. I know personally that he was a partner of Korte's when he died.

Q. And you know personally, do you, that he was in business when he died?

A. I can't say positively, for I was not there when he died, but I know that he was in business up to his death, or very nearly that time.

Q. If you can state positively that he was a partner of Korte's at the time of his death, why cannot you state positively whether or not he was in business at the time of his death?

A. I have no reason to believe otherwise up to the time of Metzger's death to think he was not a partner of Korte's up to his death.

Q. Then because you had no reason to think otherwise you are

willing to swear that in fact he was a partner of Korte's when he died; is that true?

A. That is what I believe.

Q. You mean to say now, do you, that you swear that you believe that he was a partner of Korte's when he died?

A. From the facts stated I do.

Q. Then you are swearing to a belief and not a fact within your own knowledge; is that so?

(Question objected to as not proper cross-examination, and because the witness had before given the facts, circumstances and his means of knowledge, from which it appears just what the witness is testifying from.)

A. I will say that if it had been otherwise Metzger would have told me so from our intimate relations.

Q. Have you not already said that it was some three months before Metzger's death that you had seen him for the last time?

A. Yes, sir.

Q. Then if Metzger had ceased to be a partner of Korte's after you saw him last, why do you say, in effect, that Metzger would have told you about it at the time of his death?

A. I was not there at the time of his death. I said I saw Metzger at the October term of the Mora court for 1884, and I may have seen him once more and perhaps twice more, before his death in February.

Q. You say you know the mother of the wife of Henry Korte, and that she was a married woman?

A. Yes, sir.

Q. Did you ever see her certificate of marriage?

A. No, sir.

Q. Were you present when she was married?

A. No, sir.

Q. Did you ever see any record of the marriage?

A. No.

58 Q. What is the age of Isabelita referred to in your testimony?

A. I don't know the exact age, but I know she is the youngest of the children.

Q. What is the age of Josefita?

A. Don't know that either, exactly.

Q. What is the age of Doloritas?

A. Don't know that.

Q. Do you know whether or not Frank Metzger was in Germany or absent from the Territory of New Mexico for several years since you first knew him?

A. I knew he was absent in Europe, but to the best of my recollection he did not stay more than eight or nine months.

Q. Ain't it true that you don't know how long it was?

A. I say it was about eight or nine months, and repeat it again.

Q. You say in your testimony that the mother of these children

was not a married woman when they were born. How do you say so?

A. Because she had cohabit*ated* with another man -heretofore. What I mean to say is that she did not live with a man for two years before.

Q. You mean to say that she didn't live with a man two years before to whom she was not married?

A. Yes, sir.

Q. Do you know any other man she lived with or had connections with since your acquaintance with her?

A. I do not know of any other personally of my own knowledge.

Q. What was her reputation as to living and having sexual connection with a different man?

(Mr. Catron objects to question, because it is not a fact that can be proven by the witness, and must be proven by direct testimony.)

A. I will say I never heard — reputation brought into question by anybody in regard to that.

Q. You do not think a woman's reputation is affected by open adultery, as I understand you?

(Question objected to by Mr. Catron, because it is not based on any question asked or answered.)

A. A woman living in open adultery I regard to be against the law. I forgot to tell you that the man that she lived with two years previously was dead.

(The attorney for the defendant objects to the last portion of the answer, because it was not responsive to the question, and because it was written down over his protest.)

59 Q. Now is it not possible that the mother of these children could have been married without your knowledge?

A. Yes, sir.

Q. If that is so, might it not be that she was married so far as you know of your own knowledge at the time she gave birth to these children?

A. Such a thing might be, but such is not very probable without my knowledge.

Q. Were you a constant neighbor of hers from the first time you met her?

A. No, sir; I was not a constant neighbor. She lived at the Cebolla creek, and I carried on business at the creek for a long time there, about six or seven miles distant from her house, and could always hear and find out what she was doing; that's all.

Q. You made her affairs special matters of your own, did you?

A. No, sir.

Q. You say you could always find out what she was doing; were you always inquiring what she was doing?

A. No, I was not; but if anything extraordinary was transpiring, as a marriage, I could have found out, or anything that was not in the usual run of affairs.

Q. How many years did your residence in that locality continue?
A. My residence in that locality did not exist more than one year.
Q. She lived there both before and after you did, did she not?
A. Yes, sir.
Q. How many children has the woman, or do you know?
A. I know she has three children besides those that are here.
Q. Were they born in wedlock?
A. I can't assert it. I would rather believe they were not. I state just the truth.
Q. Do you know who their father was or is?
A. It is said that a German by the name of Eberly is the father of two of them.

(This answer is objected to as being hearsay or rumor to the witness's own knowledge.)

Q. Who was the father of the other one, if you know?
A. I don't know.
Q. How many sets of children has she raised?
A. Don't know.
Q. How many different men has she lived with since you knew her?
60 A. I knew of but one.
Q. Do you know of any one of your personal knowledge?
A. No, sir; I do not.
Q. How many children in all have you seen of hers?
A. I have seen these children here and three others—six.
Q. You say that Frank Metzger told you that some of these children had cost him a great deal of money; in that conversation or in any other did he say to you that these children, or any of them, were his?
A. No, sir; he did not tell me directly. He never told me directly.
Q. The mother of these children and the children lived on Frank Metzger's ranch, did they not?
A. Yes, sir.
Q. Did Metzger ever tell you the terms or the conditions under which they lived on the ranch?
A. No, sir.
Q. Did you not understand from what he told you, and from other sources, that this family was taking care of the ranch for Frank Metzger in his absence?
A. Yes; Viviana took care of the ranch.
Q. When he told you that they were costing him a good deal of money did he intimate to you that it was not for the support and service of the family in looking after and taking care of his ranch?
A. No, sir. He said that these children cost him money but under the circumstances he was compelled to support them.
Q. Do you know of your own knowledge, that he did actually support these children and their mother all the time they were there?
A. I can't state it.
Q. Do you know whether he ever supported them at any other time than when they lived on the ranch?

A. No, sir.

Q. Do you know whether or not Frank Metzger and Viviana Martin ever had a settlement in which she receipted him in full for all claims and demands, both for herself and children?

(Question objected to by Mr. Catron, because it is not cross-examination, and because if any such receipt is given, the receipt itself would be the best evidence.)

A. I will answer that I don't know of any such settlement as you ask.

Q. You say that you have stayed one night at the ranch of Frank Metzger, when he was there, did you not?

A. Yes; not only once, but several times.

Q. When he was there?

A. No, sir.

61 Q. How many nights during one stay?

A. Whenever I came there, I never stayed but one night at a time; never more than one night at a time that I know of.

Q. Did you ever stay there as many as two days and two nights in succession?

A. If I did, I don't recollect it now.

Q. Did you ever stay there as many as three days and nights in the same week?

A. I did not.

Q. I call your attention to the fact that you have sworn that Frank Metzger has been and remained on the ranch referred to as much as one week at a time. Now if you have not been on the ranch any two days in succession, how do you know that he has been on the ranch for one week at a time?

A. I was at Mora for over a week, and during one week I went every day to Frank Metzger's house, and his own family living there at the place, informed me that he was at the Cebolla ranch and had not returned yet.

Q. What did you go to Frank Metzger's house for from Mora?

A. The house of Frank Metzger is in Mora.

Q. Then when you swear that Frank Metzger would remain on his ranch, where Viviana Martin resided, as long as one week, you were swearing to a fact of which you had no personal knowledge yourself, is that not true?

A. No, sir; I will state that after Metzger himself returned from his ranch he told me himself he had been to Cebolla creek.

Q. Was your recollection clear that Frank Metzger had told you this when you stated in your direct examination that Frank Metzger remained on the ranch as much as a week at a time?

A. Yes, sir.

Q. Then you were testifying to hearsay and not from your own actual knowledge; is that so?

A. No, sir.

Q. How many beds were there in the room where you slept on that famous night on Metzger's ranch?

A. Only one in my room.

Q. Do you know who occupied the bed when you were not there?
A. I do not.
Q. Did you ever see Frank Metzger during the nights that you stopped with him occupy a bed with Viv-ana Martin?
A. No, sir.
Q. Have you any knowledge of the fact that he ever did occupy a bed with her?
A. To my own knowledge, no.
62 Q. Have you any knowledge personally, or from what Metzger told you, that he ever had any sexual relations with Viviana Martin?
A. He never told me in a direct manner, as I said before, but he referred to it in a joking way.
Q. What did that note he told you about in his first conversation relate to, and what was the amount?
A. Well, that note, to the best of my recollection, was about six thousand dollars.
Q. Who held the note, did you say?
A. To the best of my information I believe Mr. Catron held it at that time.
Q. Held it for collection or personally?
A. Held it for collection.
Q. Who for?
A. It was a note for the firm of Waldo & Russel.
Q. You are certain he said it was a note for six thousand dollars?
A. Well, I am not certain.
Q. What was Frank Metzger supposed to — worth at that time?
A. Well, I do not know, but I suppose he was worth over fifty thousand dollars at that time.
Q. Referring to this first conversation, did Metzger tell you that Korte at that time was not a partner of his in business?
A. He never told me that he was not a partner.
Q. Do you know when Henry Korte married the adopted daughter (using your own expression) of Frank Metzger?
A. I think it was on or about 1868.
Q. From that time, 1873, is it not true that Frank Metzger and Henry Korte were together engaged in business at Mora?
A. Metzger was engaged in business; Korte, I supposed at that time, was a helper or clerk.
Q. Leaving supposition at one side, do you know that Frank Metzger and Henry Korte did not form a copartnership in business in which they were to be equally interested—equal owners—in the year of 1868, or about that time?
A. I do not know anything about such an arrangement.
Q. Do you know then there was not an actual transfer by Frank Metzger to Henry Korte of one-half of the interest in the business of Frank Metzger after the marriage of Frank Metzger's daughter to Korte?
A. I don't know anything about it.
Q. Now isn't it a fact that you don't know much about any o

these business affairs of these men, and that your testimony is largely based upon general information and reports?

A. I will state that if I know anything about the business of these two men, you must judge it from the testimony I gave you here before.

63 Q. What was the name of the business concern of Frank Metzger prior to this first conversation you testify to, if you know?

A. Prior to this time, according to my recollection, only Frank Metzger.

Q. Is that recollection based upon your knowledge of the business sign, "Frank Metzger," or is it simply that you supposed it to be true?

A. It was always in the name of Frank Metzger from 1849 to 1873. I know from my own transactions and from my friends here in Vegas.

Q. Will you answer my question?

A. Yes, sir; if I can.

Q. Then I ask you to answer it direct, as the question has been read to you at least twice.

A. It is based upon my knowledge.

Q. From your knowledge of what?

A. Upon the man and upon the business.

Q. Did you ever know of Frank Metzger controlling Henry Korte in business matters after 1873?

A. Yes, sir.

Q. State when, where, the manner in which he did so control, and as to this question, I ask of you less generality, and that you be more specific than you have been in many of the other answers.

A. In the year 1874, 1875, during the terms of the district court in Mora, I was over there during these courts, and I was very frequently setting in the store of Frank Metzger. I have heard him tell Mr. Korte, "Henry, you must go to the ranch tomorrow, get the wheat and oats ready, and have it freighted to Ft. Union" At other times during the times I was over there I heard him order Mr. Korte to get ready and go down to the ranch—the cattle ranch—to either brand and cut calves, and I think to count the stock, to which Mr. Korte always consented.

Q. Do you mean to say that in the years of 1874 and '75, at both terms of the court when you were there, you heard Metzger order Korte, "to go to the ranch tomorrow, get the wheat and oats ready and have it freighted to Ft. Union"?

A. According to the best of my recollection, I do say so.

Q. When was that court; what month in 1874 was the first court?

A. It was in the month of April.

Q. What month in 1875 was that court you refer to?

A. I refer to the four courts in two years.

Q. Give the months in these two years that those four courts were held.

A. The terms were in April and September.

64 Q. Do you know whether it was winter or spring wheat Metzger ordered Korte to freight to Ft. Union, in the month of April in those years?

A. I don't know that, but I do know that he had grain laying in his granary for two years, which had not been sold.

Q. Any other grain lying there which had not been sold during those two years?

A. I think he had some corn there, too.

Q. Any other grain that you can think of?

A. No, sir.

Q. You have just said that Metzger ordered Korte in the month of April, in the year- 1874 and 1875, to go to the ranch on tomorrow, and get the wheat and oats ready to be freighted to Ft. Union. Now you say that he had wheat and corn, and that you know of no other grain. If you know of no other grain why did you refer to oats also?

A. I said that Mr. Metzger told him to take some wheat and oats. I want to state that I am not certain whether it was in the spring or fall term of the court.

Q. Did you notice anything in the manner of Frank Metzger, who had been a business man, unusual, or that necessarily indicated that he was interested in the business beyond the good will he had toward his daughter and son-in-law and grandchildren when he offered advice to his son-in-law about the business?

A. I never saw anything unusual about him, except what a business man would perform under similar circumstances.

Q. Would not the advice he gave his son-in-law, considering their relations, be perfectly natural, even though Metzger had no interest in the business?

A. I think not; whatever regards to business, that was business.

Q. Then, according to your views of the matter, Metzger must have had a direct and pecuniary interest in the business, or else he would have offered no advice to his son-in-law. Is that true?

A. I think so.

Q. He lived with his son-in-law, didn't he?

A. His son-in-law lived with him.

Q. Who furnished the table?

A. Frank Metzger did.

Q. State how you knew of your own knowledge that Frank Metzger furnished the table after the year 1873.

A. After the year 1873 I am not positive whether he did or some one else furnished the table, but I know he did before that. After 1873, when I used to stay with him, he frequently would go out to the store, bring in one or two cans of sardines or one can of oysters, and set them on the table for us. He would do that personally.

65 Q. Could not an ordinary clerk do that?

A. Certainly he could.

Redirect examination by Mr. CATRON:

Q. What was the name of the man who lived with Viviana two years before the birth of these children?

A. His name was Eberle; Dan. Eberle, I think.

Q. Do you mean to say that he died two years before the birth of the oldest of these three children?

A. He died two years or more before the birth of Doloritas, who is the oldest of these children.

Q. Did you ever know or hear of her living with or cohabiting with any one else than Eberle or Metzger?

(Objected to because this question assumes that the witness has already testified that Viviana Martin lived and cohabited with Frank Metzger.)

A. I never knew nor heard that she lived or cohabited with anybody else.

Q. Was not the bed you occupied at the ranch taken from the room where Metzger and Viviana slept, on occasions you slept there, to accommodate you in a separate room?

A. I state that generally after supper, before bedtime, they would convey a mattress or two into the next room and make a bed on the floor, and tell me that my bed was ready at any time I wished to retire, which was the bed I slept in, when in the morning they would carry the whole bed back again in the next room.

Q. Was there not space enough in that room also to place a bed there for Metzger, and did he or did he not stay in that room with you over night?

A. Yes, there was room for several beds there. He did not stay there.

ARTHUR MORRISON.

DOLORITAS MARTIN, being duly sworn, says:

Q. What is your name, age and residence?

A. My name is Doloritas Metzger de Cordova. I am twenty-six years of age. I reside at Cebolla, Mora county.

Q. What is your mother's name?

A. Maria Viviana Martin.

Q. Which name is your mother generally called by?

A. Viviana.

Q. Are you a married woman; if so, what is the name of your husband?

A. Yes; I am married, and my husband's name is Manuel Cordova.

66 Q. Were you ever baptised in the church; and if so, by what name were you baptised?

A. Yes, I was. I don't know how they called me, but I supposed they called me by my mother's name.

Q. Do you know whereabouts you were born; if so, state it?

A. Yes, at La Cebolla. In the house of my father at Cebolla below.

Q. Who was your father?

A. My father Frank.

Q. What was his other name?

A. Metzger.

Q. How long did you live at that house of Frank Metzger, where you say you were born, that is, up to what age?
A. I lived there until I was fourteen years of age.
Q. How do you know that Frank Metzger was your father?
A. I know it because my mother, Viviana, has informed me of it.

(Objected to as not testimony by Col. Pritchard.)

Q. Did you ever hear your father, Frank Metzger, say anything about it?
A. He recognized us as his daughters.
Q. How did he recognize you, in what manner?
A. He recognized us as daughters, and used to support us and take care of us.
Q. How did he call you when he spoke to you? How did he recognize you?
A. He called me by name.
Q. State whether or not he ever, in speaking of you or about you in your presence, called you or recognized you, or spoke of you as his child.

(Objected to by Mr. Pritchard because the question is suggestive.)

A. Yes, he recognized me as his daughter.
Q. State whether or not in talking to you, he ever called you his child.

(Objected to by Mr. Pritchard as suggesting the answer desired.)

A. Yes, he called me so many times.
Q. State whether or not in speaking of you in your presence or in the presence of other persons, he ever designated or stated that you were his child?

(Objected to by Mr. Pritchard as suggesting the answer desired.)

A. Yes, he called me so.
Q. Do you know Josefita Martin and Isabelita Martin, and if so what relatives are they to you, if any?
A. They are my sisters.
Q. Are they younger or older than you?
A. They are younger.
67 Q. If you know, state where they were born.
A. Yes, I do, and they were born the same place and same house I was.
Q. Who was their mother?
A. My mother.
Q. Who was their father?
A. My own father.
Q. Do you mean by that Frank Metzger?
A. Yes.

(Objected to by Mr. Pritchard.)

Q. How do you know that Frank Metzger was their father?
A. Because our mother informed us all of it.

Q. State if you ever heard Frank Metzger say anything about their being his children, if so what did he say?

(Objected to by Mr. Pritchard as being leading and suggestive.)

A. I heard him say so, and he called them his daughters.

Q. To whom was he talking when he called them his daughters?

A. I cannot remember to whom, I was very small. I cannot tell, there were several persons at the house.

Q. When he spoke to them how did he designate them?

A. He named us as his daughters and called us too.

Q. State who supported you, if any one, and also your sisters.

A. Our papa used to support us all in everything.

Q. During the time that you lived at that house, state if you ever saw Frank Metzger there, if so, how frequently.

A. He came to the house all the time.

Q. State whether or not he remained there over nights.

A. Yes.

Q. How many bed-rooms were there in that house at that time?

A. Four.

Q. When Metzger slept there over night, in which room did he sleep?

A. In the same room where my mother slept.

Q. Do you know whether or not they slept in the same bed; if so, so state.

A. They didn't put me as a witness; of course I knew. I know they did.

Q. When Metzger went there how long did he stay at a time—I mean at that time while you were living at that house?

A. Sometimes he stayed two or three days, sometimes a week.

Q. During the times he was there while you lived at the house, state whether or not he occupied any other house, or room, besides the one occupied by your mother.

68 A. No, he did not occupy any other room.

Q. Where did he take his meals during the time he was at the house?

A. He took it in the same house.

Q. Who prepared his meals for him there?

A. The cook that he had hired for that purpose.

Q. Did any one take meals along with him at the same table, if so, who?

A. Our mamma and us. I mean by "us" all my sisters.

Q. Were there more than three besides your mother?

A. Yes.

Q. Who was there?

A. My brothers.

Q. Who prepared the meals for your mother, you and your sisters?

A. That cook that my father had hired.

Q. Who furnished the materials for the meals?

A. Papa.

Q Did your father, Frank Metzger, live or stay any portion of the time at any other place beside there at that house?

A. He lived at Mora and he lived at our house.
Q. About how far was that house from Mora, where you lived?
A. It is far, about two miles.
Q. Do you know anything about the measurement of distance?
A. No, sir.
Q. At which place did Metzger stay the greater part of the time, at Mora or at the house where you lived?
A. He stayed at Mora and the place we lived about equally, sometimes in one place and sometimes in another.
Q. Had he any property at the place where you lived, besides the house in which you lived, if so please state—in lands or in other property?
A. He had lands and horses.
Q. What was that place called?
A. La Cebolla.

Cross-examination by Mr. PRITCHARD:

Q. You are the petitioners in this suit, are you not?
A. Yes, sir.
Q. When did you first conceive the idea of instituting these proceedings against Henry Korte?
A. Since my father died.
Q. How much are you now claiming?

(Objected to as not being cross-examination, and because the bill of complaint shows what is claimed.)

A. I claim the portion that I am entitled to.
69 Q. What are you entitled to as you understand?

(Objected to by Mr. Catron for the same reasons as above.)

A. Mr. Catron and the other lawyers well know.
Q. Then you don't know anything about it, is that it?

(Objected to by Mr. Catron.)

A. No, sir.
Q. You say that Frank Metzger recognized you as his daughter. Now state in what words that he recognized you as his daughter.
A. In the words that he used to call me his daughter and treat me as his daughter, and I did not recognize any other father but him.
Q. What name did he call you by?
A. Doloritas he called me.
Q. And because he called you Doloritas, you understand he recognized you as his daughter?

(Objected to by Mr. Catron as not being based upon the evidence given, and because it is unfair and misleading to the witness.)

A. Not because he called me Doloritas. I have not recognized any other father but him.
Q. And because he called you Doloritas, you understand he recognized you as his daughter?

(Objected to by Mr. Catron, because it has been asked in preceding question *verbatim et literatim*, and was answered in full when the witness said, "not because he called me Doloritas.")

Mr. PRITCHARD: "Mr. Interpreter, tell the witness to pay attention to the question and answer the question directly."

(Mr. Catron objects to the interpreter telling the witness any such thing; the interpreter has no right to tell the witness any such thing, but only interpret question and answer; the witness has been sworn to answer the question.)

A. No, I don't understand it for that reason.

Q. You say that he called you by name. Did he ever call you by any name except Doloritas?

A. He never called me by any other name.

Q. You also said that he supported you and the other children. Now was it because that he supported you and the other children that you understand that he recognized you as his daughter?

A. Yes.

Q. Is this the only reason you have for his recognizing you as his daughter?

A. Yes.

Q. You were living on Frank Metzger's ranch with your mother, were you not, when he visited the house you have referred to?

A. Yes, sir.

70 Q. Do you know the consideration, if there was any consideration, she received for taking care of his house?

A. Yes, sir; I do not know for what it was, but he supported us.

Q. Do you know whether he gave her any other consideration, except to support her for taking care of the house?

A. I do not know.

Q. Frank Metzger was in business at that time, was he not?

A. Yes.

Q. He was in business in the town of Mora at that time, was he?

A. Yes, and also at Cevolla.

Q. What business was he in at Cevolla?

A. He was taking care of his property there.

Q. You mean he had a ranch, don't you?

A. Yes, sir.

Q. It was a small ranch, was it not?

A. It wasn't very small nor very large either.

Q. How much land did he cultivate on that ranch?

A. I cannot know, because I have not measured it.

Q. Was it a small part or a large spot?

A. It was a large spot.

Q. Now, since you know what a large spot is, please tell us how many varas there were cultivated.

A. Maybe perhaps a little less than a thousand varas one way.

Q. One thousand varas one way. How much the other?

A. About two hundred in width.

Q. Didn't he have men to do that work on the ranch?

A. Yes, he did.

Q. He had a store in Mora, didn't he?
A. Yes, sir.
Q. Didn't he have a clerk in the store?
A. He had none.
Q. He attended the store himself, did he?
A. Yes, sir.
Q. Now isn't the store about six or seven miles from the ranch?
A. Yes, it is about that.
Q. Was Frank Metzger in the habit of closing up his store during the week days?
A. I do not know. I cannot know that.
Q. If he attended to the store in person, and had no clerk, ain't it true that he was at the store much more of the time than on the ranch?
A. I cannot know.
Q. You don't mean to say, do you, that Frank Metzger was on that ranch half of his time?
A. He was half of the time, and the other time up at Mora.
71 Q. Didn't Frank Metzger at the same time have another ranch up at Buena Vista?
A. Yes.
Q. Wasn't the ranch at Buena Vista a much larger and better ranch than the one where you lived?
A. Yes.
Q. Now, do you mean to say that he wasn't on the large ranch as much as he was on the ranch where you lived?
A. Yes.
Q. Then you say, do you, that he spent more time on the small ranch than he did on the large one?
A. Yes, sir.
Q. How do you know that to be a fact?
A. I saw him when he stayed at our ranch, but I don't know when he stayed at the other ranch, much or not.
Q. Then why do you say that he stayed at the smaller ranch more than he did at the larger one?

(Objected to by Mr. Catron, because the testimony preceeding, especially the last answer, shows the reason why.)

A. It was a small ranch where I used to see him. I did not see him at the big ranch.
Q. Didn't you say that he stayed more on the small ranch than he did on the big one?
A. I said he stayed more at the little ranch than he did at the big one, because I saw him at the little one. I did not see him at the big one, because I was not there.
Q. Now ain't it a fact that you are guessing a good deal at this testimony of yours?
A. No, sir.
Q. Ain't you swearing a good deal from hearsay?
A. Yes.

(Counsel for plaintiff having stated that he did not believe that the witness understood the question, the question was repeated to her, and she answered as follows:)

A. Not what I have heard, but I know of my own knowledge.

Q. Ain't you swearing a good deal upon information received from others?

A. No, sir; what I have said is because I know it; not heard from others.

Q. How old were you in 1875?

A. I do not know; do not know the dates nor the years.

Q. How large was you in 1875?

A. Cannot know.

Q. How old are you now?

A. I am twenty-six years old.

72 Q. You are twenty-six years old now, and can't tell us how old you were in 1875?

A. No, sir.

Q. Can you remember very well back to that date?

A. No, sir.

Q. You are sure of that, are you?

A. Yes; I am certain of it.

Q. Can you remember back of 1875?

A. No, sir.

Q. Not a single thing?

A. No.

Q. Can't even remember Frank Metzger back to that date?

A. Yes.

Q. Then why did you say you did not remember a single thing back of that date?

A. I remember my father and think of him every minute.

Q. Is he the only object you can remember previous to that date?

A. Yes, sir.

Q. Can't you remember anything about your father as far back as 1873?

A. No.

Q. Now, don't you know it is a fact that Frank Metzger never called upon your mother, nor upon you, at the ranch or anywhere else after the year 1873?

A. I do not know.

Q. When did your mother move away from the ranch, if she ever moved away?

A. I cannot tell; I have already told you everything I know, I cannot tell you what I do not know.

Q. Have you been away from that ranch as much as ten years?

A. I think I have been absent longer than that.

P. Have you been absent from the ranch as long as fifteen years?

A. I think it is less than fifteen years since we moved from the ranch to Buena Vista.

Q. You seem to know that it has been fifteen years since you left

that ranch, and you also know that it has been over ten years; please tell us just how long it has been.

A. I cannot tell exactly, it may be fourteen years.

Q. Has this suit been talked over in your presence?

A. No, sir; only in the probate court once.

Q. Hasn't it been talked over a little in your presence, several times since the probate court?

A. No, sir; not in my presence.

Q. Has it not been talked over somewhat in your presence in the last two days?

A. Yes, it has been.

73 Q. Have you understood the part you were to take in this case, and have you also understood the kind of testimony that you were to give when you were called as a witness?

(Objected to by Mr. Catron as not being proper cross-examination, as calling for something that is not intelligible to the witness, nor to any one else, and containing an insult and an insinuation to the witness, as being scandalous.)

A. No, sir.

Q. Have you been informed by your mother what she wanted or expected to prove in this case?

A. Yes, by my mother I have.

Q. Has she informed you fully what she wanted to prove, or only in part?

A. Only that my mother told me that he was my father, that is all.

Q. Would you have known anything about his being your father, except what your mother told you?

A. No.

Q. Did she tell you this at the time she said she wanted you as a witness?

(Objected to by Mr. Catron because there is not proof to sustain it, and misleading.)

A. She told me that when I was young, he was my father; she never told me she wanted me as a witness.

Q. Have you forgotten what you have already testified to about your mother talking to you as to this case?

A. I have not forgotten that my mother told me that he was my father, and I have told you that many times.

Redirect examination by Mr. CATRON:

Q. Have you ever had any education at school, or do you know how to read and write?

A. No, sir.

Q. Do you know anything about dates, especially about times past?

A. No, sir.

Q. Do you know whether before or since 1875?

A. I do not.

Q. Is it not true that you know that Frank Metzger recognized you as his daughter, because he called you his daughter when speaking to you, and when speaking to others in your presence, he said you were his daughter?

(Objected to by Mr. Pritchard because the witness has absolutely sworn in her cross-examination that Frank Metzger never called her by any name except Doloritas, and that he never called or recognized her as daughter in any shape, form, manner, except he supported her.)

A. Yes.

74 Q. Is it not true that Frank Metzger some time in speaking to you called you his daughter?

(Objected to by Mr. Pritchard for the additional reason that this is not legitimate redirect examination; that the same question in effect was put and answered in the examination-in-chief.)

A. Yes, he called me "my daughter" and by my name.

Q. You have stated that you recognized Frank Metzger as your father because your mother told you, and because he supported you. Is it not also true that you recognized him as your father because he called you his daughter, and because he stated to other people in your presence that you were his daughter?

(Objected to by Mr. Pritchard because it is improper. It is leading and assumptive.)

A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. You now state that you don't know anything about years and dates. If you don't know anything about years and dates, what did you swear to them for in your examination-in-chief and cross-examination?

(Objected to by Mr. Catron because the witness did not swear, in either her direct or cross examination, to years and dates, and because the question is misleading.)

A. I did swear to years and dates; I cannot swear to things I do not know.

Q. You now swear that you did not know whether you were born before or since 1875; if this is so, why did you testify to your recollections in the year 1873?

(Objected to by Mr. Catron because the witness did not testify to any recollections in 1873, and because misleading.)

A. I did not so swear.

her
DOLORITAS x MARTIN.
mark

Las Vegas, September 2nd, 1887.

VIVIANA MARTIN, being sworn, says:

Q. What is your name, age, and residence?
A. My name is Viviana Martin; I don't know my age, and I live at Buena Vista, Mora county, New Mexico.
Q. Do you know Doloritas Martin, Josefita, and Isabelita, complainants in this case; if so, are they any relations to you, and what?
A. Yes; they are my daughters.
Q. Give their ages to the best of your knowledge.
A. Doloritas is twenty-six years old; Josefita, twenty-four years old; Isabelita, twenty-two.
75 Q. Where were they born?
A. At La Cevolla.
Q. In what house were you living when they were born?
A. In the house of Don Francisco Metzger.
Q. Who was the father of those girls?
A. Don Francisco Metzger.
Q. State whether you at the time of the birth of either one of these children was a married woman or not.
A. No, sir; I was not.
Q. Was Frank Metzger a married or single man at those times?
A. Single.
Q. Where did Frank Metzger live at the time of the birth of these three children?
A. At La Cevolla and Mora.
Q. When he lived at Cevolla at what house did he live?
A. At his own house.
Q. State whether or not it was the same house — lived in or a different house.
A. In the house I lived in.
Q. What were your relations with Frank Metzger at the time of the conception and birth of those children?
A. The same as if he had been my husband.
Q. During those times how much of the time did Frank Metzger stay at Cevolla, where you lived?
A. All the time he wanted.
Q. Well, what proportion of the time did he stay at Cevilla?
A. All of the time that he needed to be.
Q. Was he there half of the time, a third of the time, two-thirds of the time, all of the time, or what amount?
A. All the time he wanted. Sometimes he stayed three or four days in a week.
Q. You say he lived in Cevolla and in Mora. In which place was he the most?
A. He must have been almost the same. Wherever he wanted to be, there he was.
Q. Do you mean by that to say that he was at one place as much as the other, or what do you mean by it?
A. I mean to say that he was as much as he was wanted in one place as the other.

Q. I don't care anything about what you wanted. I want to know the facts, whether he stayed at La Cevolla as much of his time as he did at Mora; that is, at which one of the places did he stay the greater length of the time?

(Objected to by Mr. Pritchard, because it presupposes the fact that this witness was with Frank Metzger all the time, which within itself is improbable.)

76 A. The same as I said he stayed as much time in one place as in the other.

Q. When he was in La Cevolla, where did he take his meals?

A. At the house where I lived.

Q. Where did he sleep?

A. There in the house.

Q. What room did he occupy in reference to the room you occupied in reference to sleeping?

A. In the room that I occupied.

Q. Who occupied the room along with him, if any one?

A. I and him.

Q. Did any one occupy the same bed with him? Who was it while there?

A. I did.

Q. How do you know that Frank Metzger was the father of those three children?

A. Because I know that I had them from him.

Q. What arrangements had you with Frank Metzger during that time for living at that house with him?

A. The arrangements that I had with him were he took me to his house to live with him, and he was to support me.

Q. About how many years, to the best of your recollection, did you live in that way with Metzger in that house?

A. About sixteen or seventeen years; eighteen at the most.

Q. Do you remember how long since you ceased to live with him at that house?

A. Don't remember very well; must be about thirteen or fourteen years.

Q. Do you remember what year it was you stopped living with him at that house?

A. I don't know dates.

Q. When Metzger took his meals at that house did any one else take their meals at the same table with him? If so, who?

A. I did.

Q. When did the three children eat?

A. With him and I.

Q. Who furnished the provision at that house during the time that you lived there?

A. Him—Don Francisco.

Q. Who furnished, if any one, the clothing for yourself and three children? I mean during the time they lived there.

A. Don Francisco.

Q. State whether you have ever heard Frank Metzger speak of

the three children, Doloritas, Josefita and Isabelita, or either of them in reference to any relationship between him and them; and, if so, what did he say?

77 A. That they were his children.

(Just tell her to state whether he said that or not.)

A. He said it.

Q. How many times did you ever hear him state that?

A. All the time.

Q. What do you mean by saying you heard him state it all the time?

A. That he said it whenever there was an occasion to do so.

Q. State whether he said so frequently, or only once or twice.

A. Many times.

Q. When he spoke to the three children, or had anything to say to them, how did he designate them?

A. By their names, or by daughter, or by "my darling."

Q. State whether or not you ever heard him call them, or either of them, in speaking to them, "my daughter, or my daughters," and if you have state whether he did so frequently, or only occasionally.

A. Frequently.

Q. Did you ever hear him speak to any other person as to his relationship to those three children? If so, what did he say about it?

A. That they were his daughters.

Q. State whether that is what he said or not.

A. Yes, he said so.

Q. Do you know or remember anything about the time when Don Francisco Metzger conveyed that ranch and other ranches to and property into the name of Henry Korte?

A. Yes.

Q. State how you happened to know anything about that.

A. Because Don Francisco told me so.

Q. Any one else told you?

A. Don Francisco and Senior Henry Korte.

Q. Whenabout did they tell you?

A. La Cevolla.

Q. At the house or not?

A. At the house.

Q. State whether they were there together or not at the house.

A. Yes.

Q. Are you acquainted with Henry Korte? If so, how long have you known him?

A. Since I lived at the ranch at Cevolla.

Q. What was said when they told you about the conveyance of the ranch and other property?

A. When they were giving the cattle on shares they talked about being partners.

78 Q. Was there anything said about these conveyances? If so, by whom?

A. They said they were in partnership; both of them.

Q. Was there anything about the name of the partnership or the partnership firm? If so, what did they say?

A. Yes; they said they were in partnership to help each other out.

Q. Your answer is not responsive to my question. My question was whether they said anything about the firm's name in which the business would be carried on. If so, state what either of them said.

A. That the partnership was in the name of Henry Korte.

Q. Who said that?

A. Don Francisco and Henry Korte.

Q. Did they mention that they were in partnership? And, if so, state what property.

A. Yes; the property of Don Francisco.

Q. How long was that before you left the ranch? I mean the Metzger house at Cevolla.

A. Two years, going on three.

Q. Where did you go to live after that?

A. Buena Vista. It is very near, about a mile or less from Cevolla.

Q. After that time and up to the time you left—I mean during the two years, going on three, after you heard the conversation—who managed and controlled the business at that place? I mean the ranch at Cevolla.

A. Henry Korte sent a man up there. He was not up there personally. This man's there yet. There have been different men there since. This man that is there now is Ricardo Rivera.

Q. State whether or not Metzger did not also after that manage and control that ranch and carry on business there.

(Objected to by Mr. Pritchard because the question is suggestive and she has already testified who took charge of the ranch after she left.)

A. They both managed it, Senor Frank and my brother-in-law Henry. They both gave orders to the men that were on the ranch. They never worked there themselves.

Mr. Catron closed, but gave notice that he may want to recall this witness.

Cross-examination by Mr. PRITCHARD:

Q. Were you ever married?

A. No, sir.

Q. How many children have you now?

A. Seven.

Q. How many others that are not living?

A. There is but one dead.

79 Q. Is one man the father of all these children?

A. No, sir.

Q. What other man did you live with besides Metzger?

A. I first lived with the deceased Santiago Bone.

Q. You have named two that you lived with, can you name another?

A. I lived with three men.

Q. Well, name the third one.

A. The deceased Daniel Eberle.

Q. Who has supported you and your family since the year 1875?

A. I don't know anything about dates, all I know is that after Eberle died, I went to live with Don Francisco, and he has supported the family. I lived with him until I went away from the house.

Q. I have not asked you anything about dates. Can't you answer me, who has supported you and your family for the last twelve years?

(Objected to by Mr. Catron because the previous question shows that the witness was asked directly about dates—that is, the year 1875.)

A. I.

Q. Why is it that Francisco Metzger has not supported you, and your family, for the last 12 years, up to the time of his death?

A. Because he gave me something to support me with so I would not be asking for it.

Q. Did you give him a writing at that time?

A. Yes: I gave him a receipt for what he had given me.

Q. Well, was that all you did was to give him a receipt for what he gave you?

A. Yes.

Q. Now, isn't it a fact that when he gave you this consid-ation of which you have spoken that you gave him a paper signed by yourself, and also that you signed the names of these three children as their natural guardian, in which you relinquished all claims of every character for yourself or your said children?

(Objected to by Mr. Catron, because the original paper should be presented and shown to the witness before she can be asked about its contents, or its absence accounted for.)

A. No.

Q. You are not certain that you did not sign such a paper?

(Objected to by Mr. Catron because of the same reason of the last question, and because no such paper purporting to be of the character mentioned is presented or shown to the witness, either
80 in asking this question or the one preceeding it, and because the testimony sought to be elicited by this question, and the one preceeding it is immaterial and irrelevant to the issue, and not proper examination.)

A. I did not sign that paper. All I did was to give a receipt.

Q. If there is such a paper as the one I have just referred to, and your name is upon it, do you pronounce it as forgery?

(Objected to by Mr. Catron because of the same reason given in the objections to the last two questions.)

A. The only paper I signed was the receipt I gave to Don Francisco not to ask him for any subsistence during his life.

Q. You are sure, are you, that that is what the receipt contained?

(Objected to by Mr. Catron for the same reasons as given in the objections to the last three questions.)

A. Yes, sir.

Q. Was the receipt read over to you?

A. They read it over to me, and he told me to conform myself with what he gave me for my subsistence.

Q. Where was this that you gave the receipt?

A. At the house in La Cevolla.

Q. Who was present?

A. Only myself and Mr. Morrison.

Q. Nobody else present when you signed it besides Mr. Morrison?

A. I don't remember. I didn't see anybody.

Q. Do you know Jesus Ma. Gallius?

A. I don't know. I know many Gallius.

Q. Do you know Phillip Gallius?

A. No, sir.

Q. Do you know a man by the name of Francisco Gallius up in the country?

A. No.

Q. Were not Ramon Bone, Eleanor Lumbach, and Andres Eberle present when you signed that receipt to which you refer?

A. No.

Q. Do you state upon your oath that they were not present at any time when you signed a receipt or a release of all demands against Metzger?

(Objected to by Mr. Catron because not based upon any evidence given, as not being cross-examination, as assuming that the witness signed such a release or receipt, and as being directly contrary to the testimony given, the witness having sworn she signed no such receipt or release, and being unfair and misleading to the witness.)

81 A. I didn't demand anything but the subsistence of my family.

Q. Having sworn that you did give a receipt to Frank Metzger, I now ask you whether you ever gave a receipt of any kind to the said Metzger in the presence of the parties or any of the parties last above named?

(Objected to by Mr. Catron because if any such receipt was given or signed the same has not been presented to the witness for inspection, and she cannot be required to answer until the same has been presented to her for inspection, or its absence accounted for.)

A. I haven't given him any receipt in the presence of any of the parties. The only receipt I gave him was in the presence of Mr. Morrison for the subsistence of the family.

Q. Do you deny ever having signed the names of Doloritas, Josefita and Isabelita, your children, or having made their marks after

their names to any receipt, release or relinquishment given to Frank Metzger?

(Objected to by Mr. Catron, because if any such receipt or document is claimed to have been made, the original should have been presented and shown to the witness, which has not been done, before she is required to answer.)

A. I only gave a receipt for the subsistence he gave me; nothing more.

Q. If there is any such paper as that referred to in the previous question now in existence containing the names of those children, purporting to have been signed by you in the presence of others, is that paper a forgery or not?

(Objected to for the same reasons as given in the last objection.)

A. If it is *what*side of what I have said it is a forgery. I claim nothing else but the subsistence for myself and children.

Q. Is you memory distinct as to all these things you have sworn about?

A. Yes, sir.

Q. Is your recollection good?

A. Yes, sir.

Q. You have stated in your examination-in-chief that Frank Metzger remained on the ranch where you were living exactly the same length of time that he would remain in Mora. Are you clear that your recollection as to this is correct?

(Objected to by Mr. Catron, because the witness has not so stated in her evidence.)

A. I am more sure of that than anything else. I cannot state positively as to the day whether he stayed in one place more than another. He came and went as he pleased.

82 (This answer is objected to by Mr. Pritchard, because it is not interpreted by the interpreter of this examination, and because it does not agree with the interpreter's version in all respects as to what the answer was.)

Q. Were you ever on this ranch when either Korte or Metzger were there after you moved to Buena Vista?

A. No.

Q. Did either Metzger or Korte ever give any orders as to that ranch in your presence at Buena Vista?

A. He didn't give any orders at Buena Vista in my presence.

Q. Did they ever give any orders as to this ranch after you moved away from the ranch?

A. They did not give any orders in my presence, but I know it from the parties that lived there.

Q. A good deal of your testimony is given, is it not, from what you know that others told you?

A. Nobody has told me anything. I have seen it.

Q. You have spoken about Metzger and Korte being at this Ce-

volla ranch, and speaking about their copartnership. Please state about when this was.

A. At the time I was there; I don't know anything about dates or years. The time I was living at La Cevolla.

Q. You have said that you lived there about fourteen years. Now can you say whether it was at the beginning of the time you commenced to live there, the middle or the end of the time?

A. Near the end.

Q. Was Metzger a very affectionate man?

A. Yes, sir.

Q. Was it a very common thing for him to speak to the children in very affectionate terms?

A. Yes, sir.

Q. All children to whom he was acquainted, do you mean?

A. Yes, sir.

The attorney for the defendant here closes his cross-examination, giving notice at the same time that in due time he will ask to continue the cross-examination of this witness, which he is induced to do from the fact this examination has been insisted upon in the absence of co-council, whose advice and service is necessary in the examination.

Attorney for complainants objects to any further cross-examination of this witness at any future time, because this testimony is taken after full and due notice to the attorney for the defendants.

That the attorney for the defendant is the attorney that pre-
83 pared the answer in the case; he is also the leading attorney in the case, and the attorney to whom the co-counsel referred to intrusted the management of this case during his absence.

Redirect examination by Mr. VEEDER:

Q. Have you ever lived with any one else besides Daniel Eberle, Santiago Bone, and Francisco Metzger?

A. No, sir.

Q. With which one of these three did you live first?

(Objected to by Mr. Pritchard because it is not cross-examination, and has already been elicited.)

A. Santiago Bone.

Q. With which one of these three did you next live?

(Objected to by Mr. Pritchard for the same reasons as last objection.)

A. With the deceased Daniel Eberle.

Q. With which one of these three did you live last?

(Objected to by Mr. Pritchard for the same reasons as last question.)

A. Don Francisco.

Q. Did you live with them all at any one time, or any two of them at one time?

(Objected to by Mr. Pritchard for last above reason-.)

A. Never did.

Q. With how many of these three persons did you ever live at any one time?

A. I lived first with the deceased Santiago, then with the deceased Daniel Eberle, then afterwards with Francisco.

Q. What did Frank Metzger give you for which you gave the receipt you have spoken of?

A. He gave me the worth of three thousand.

Q. What did it consist of? Money or property, and what kind of property?

(Objected to by Mr. Pritchard because the question is assumptive.)

A. Cattle and a mortgage of five hundred dollars, and five hundred dollars in cash.

Q. Was that receipt you gave in Spanish or English?

A. I don't know if it was. I did not write it.

Q. Was the receipt read to you?

(Object- to by Mr. Pritchard because it is already testified to.)

84 A. Yes, sir.

Q. Did they read the receipt to you as saying that he gave you that subsistence to last during his life?

(Objected to by Mr. Pritchard because it is leading.)

A. So that I might not ask for any more subsistence for me or my family during his life.

Q. Can you write your name?

A. No, I don't know how to write.

Q. Were you living at the Cevolla ranch when this receipt was signed?

A. Yes, sir.

Q. Can you neither read nor write?

A. No, sir.

Q. State whether or not it was customary for Frank Metzger to call children other than his own by the terms daughter and darling?

A. Those that were not his he never did.

Recross-examination by Mr. PRITCHARD:

Q. What do you know about his custom as to other children except your own?

A. I don't know anything.

Q. Then you don't know anything about his custom in this respect with other children not in your presence?

A. No, sir.

Q. You don't know how many other children he had, do you?

A. No, sir; only Juanita, my sister, the wife of Henry Korte.

Q. Do you mean to say that is the only other child he had?

A. Yes, that is all I know.

Q. He might have had a dozen others, and you not know anything about it, mightn't he?

(Objected to by Mr. Veeder, because it calls for an opinion and something not in the knowledge of the witness.)

A. I don't know.

Q. Wasn't he a good deal like you in his habits of living with several parties and cohabiting with that he was not married to?

(Objected to by Mr. Veeder for the same reasons as stated in the last preceeding objection.)

A. No, sir.

Q. How old was you when you commenced to live with Bone?

A. I don't know how old I was. I was very young.

85 Q. You have stated how many men you have lived with; now state before your God how many men you have cohabited or had sexual intercourse with, if the number is not too great that you can't remember them.

(Objected to by Mr. Veeder because the question assumes a fact that is not in the testimony of the witness, since she has testified that she lived and cohabited with only three persons, and with no others, and because, further, the question is designed to insult the witness and is an insult to the witness.)

A. I haven't had any sexual intercourse but with these men.

Q. Do you know Dr. Gandert?

(Objected to by Mr. Veeder, because it is not proper recross-examination, as no reference has been made to Gandert.)

A. Yes, sir.

Redirect by Mr. VEEDER:

Q. Did you ever hear Frank Metzger call any children other than his own daughters and darlings?

A. I never did.

Question asked by the master at Mr. Veeder's request to Mr. Pritchard: Mr. Pritchard, are you through with this witness?

Mr. PRITCHARD: "Subject to the objection heretofore given."

Attorney for the complainants objects to any further cross-examination of the witness for any cause or reason assigned in the objections heretofore made by the attorney for the defendant.

her
VIVIANA x MARTIN.
mark.

Las Vegas, September 3rd, 1887.

JOSEFITA MARTIN, being duly sworn, says:

Q. What is your name, age and residence?

A. Josefita Martin is my name, am about twenty-four years old and live in Red River.

Q. Have you a husband; and if so, state his name.
A. Manuel Duran is my husband's name.
Q. Give your mother's full name.
A. Viviana Martin.
Q. State by what name your mother was generally known.
A. Viviana Martin.
86 Q. Were you ever baptized in the church, and if so by what name were you baptized?

(Objected to by Mr. Pritchard because it is immaterial.)

A. Yes, by the name of Josefita.
Q. Ask if that was her full baptismal name.

(Objected to by Mr. Pritchard because it is immaterial and if it was material this is not the method to prove it.)

A. Yes, sir.
Q. Is Josefita you- whole and full name?

(Objected to by Mr. Pritchard, that this witness has given her name already, and an attempt to have her change it or modify it is unfair to the witness.)

A. It is.
Q. Do you know where you were born? If so, state where.

(Objected to by Mr. Pritchard because calling for a fact impossible to the knowledge of the witness.)

A. Yes, at La Cevolla.
Q. Do you know in whose house you were born, and if so state it?

(Objected to by Mr. Pritchard for the same reason as objection last made.)

A. Yes, I was born at my father's house.
Q. Who was your father?

(Objected to by Mr. Pritchard as being impossible for the witness to swear to.)

A. Papa Frank.
Q. State his full name, if you know.
A. Frank Metzger.
Q. How do you know that Frank Metzger was your father?
A. Because my mother has told me so.

(This answer is objected to by Mr. Pritchard, because what her mother told her is not evidence in this case.)

Q. Did you ever hear your father, Frank Metzger, ever say anything about it, and if so state what he said?
A. Yes; he said I was his daughter.
Q. Did he say that to you?
A. Yes, sir.
Q. State whether or not he ever made any such statement in the presence of others.

(Objected to by Mr. Pritchard, because it calls for an answer as to a matter she could have no personal knowledge —.)

A. Yes, sir; he did.

87 Q. State how long you lived at the house of Frank Metzger, where you say you were born.

A. I cannot know how long. I was very young.

Q. State it more or less.

A. Until I was about the age of twelve years.

Q. Who supported you during that time, and until you were married?

A. My father.

Q. Who furnished you with clothing?

A. My father.

Q. When you say "papa," who do you mean?

A. My papa, Frank.

Q. Is he the same person as Frank Metzger?

A. Yes, sir; he is.

Q. Do you know Doloritas Martin and Isabelita Martin?

A. Yes, sir.

Q. State what relation they are to you, if any.

A. My sisters.

Q. Where were they born, if you know?

A. In La Cevolla.

Q. At the same house in which you were born?

A. Yes, sir.

Q. Who was their mother?

A. My own mother.

Q. Who was their father?

A. My father, Frank.

Q. Do you mean by that Frank Metzger?

A. Yes, sir; I do.

Q. How do you know that Frank Metzger is their father?

A. Because my mother has told me and them so.

Q. Do you know it from anything else that you have seen or heard said or done by anybody?

A. No, sir.

Q. Did ever hear Frank Metzger, your father, speak to them, and if so, how did he address them?

(Objected to by Mr. Pritchard, because it has been answered by the last answer of the witness, and this question is leading, and is intended to solicit a different answer.)

A. Yes; sometimes he would call them by their names, and sometimes my daughters.

Q. Where were you living when you heard Frank Metzger address Doloritas and Isabelita in this way?

A In La Cevolla.

Q. At whose house?

A. At his own house.

Q. Whose own house?

A. My father's house.

88 Q. Did Frank Metzger come to your house at Cevolla frequently or not?

A. He did.

Q. Who lived at that house, the house at Cevolla, with you, while you lived there?

A. My mother.

Q. State who else, if any one.

A. My sisters.

Q. Who do you mean by your sisters? Give their names.

A. My sister Leonor, my brother Roman, my brother Andres, my sister Marrillita, Doloritas and Isabelita.

Q. State whether or not there was a ranch where you lived at Cevolla, and if so who was the owner of it?

A. There was one that belonged to my father Frank.

Q. When Frank Metzger came to your house, how long would he remain?

A. Three or four days; one week; he stayed as long as he pleased.

Q. How often would he come, more or less?

A. Very often.

Q. What part of the time did he spend at your house at Cevolla?

A. I don't know.

Q. Was your mother there at the house of Frank Metzger at Cevolla while you were living there?

A. Yes.

Q. Where did Frank Metzger sleep while he remained at your house at Cevolla?

A. In the room where my mother slept.

Q. How many rooms were there in that house?

A. Four.

Q. How many sleeping-rooms?

A. Four.

Q. State with whom Frank Metzger slept, if any one, while he remained at your house at Cevolla.

A. I don't know.

Q. You state that Frank Metzger and your mother slept in the same room in your house at Cevolla; I will ask you to state whether or not they occupied the same bed in that room.

A. I don't know.

Q. Did he, Frank Metzger, when he came to your house at Cevolla, occupy any other house or room than that occupied by your mother?

A. He did not.

Q. Where did he get his meals when he came there?

A. At the same house.

Q. Who prepared his meals for him while he was there?

A. The cook we had.

89 Q. Who paid that cook, if you know?

A. He did.

Q. Who do you mean by he?

A. My father, Frank.

Q. Who took meals along with you while Frank Metzger was at your house at Cevolla?

A. Only him.

Q. Who is only him?

A. My father, Frank.

Q. Who sat at the table with Frank Metger while he was at your house, and ate meals with him?

A. My mother.

Q. Any one else?

A. And the family.

Q. By the family do you mean your sisters?

A. Yes.

Q. All of them?

A. Yes, sir.

Q. State who paid for the provisions, for the meals that were furnished you while you lived at the house of Frank Metzger at Cevolla.

A. My father, Frank.

Q. State whether or not it was at your house that Frank Metzger addressed you and your sisters Doloritas and Isabelita as his daughters.

A. It was.

Q. Did he address you in this way in the presence of others when he came there at Cevolla?

A. He did.

Cross-examination by Mr. PRITCHARD:

Q. How old are you?

A. Don't know. Think about twenty-four years old.

Q. How old were you when your mother moved off of the ranch you have testified about?

A. About twelve.

Q. How long was it before she moved away from the ranch that you saw Frank Metzger there?

A. I saw him till I moved away.

Q. How long ago can you remember?

A. I don't know how long.

Q. What was your occupation at the time you left there?

A. Work in the house.

Q. How large were you?

A. I was about twelve years old.

Q. How large?

A. I do not know, cannot tell how large I was.

90 Q. Were you familiar with Frank Metzger's business at that time?

A. No, I was too small and too young.

Q. Then you testified here about his paying for provisions at the house—you saw him pay for the provisions, did you?

A. I never saw him but I heard that he did.

Q. Did you hear it then or since?

A. Then and since.
Q. You say that you were very small at that time, now tell who took upon themselves to inform you that Metzger was paying for the provisions?
A. My mother and the cook.
Q. Did the cook tell you very frequently about this?
A. She did.
Q. What was the name of the cook?
A. Lupe.
Q. Name some of the persons that were present when Metzger called you his daughter?
A. I cannot name them.
Q. What name did he call you by when he spoke to you?
A. By my name, Josefita.
Q. Did he always call you by that name?
A. Always.
Q. Did he never call you Josefita?
A. He did.
Q. Then he called you by two names, didn't he?
A. Is it not the same?
Q. Then as you understand it, he never called you by more than one name?
A. Only by one name.
Q. Did he ever call you to him?
A. He did.
Q. What name did he call you by then?
A. Josefita or Josefa, whatever he pleased.
Q. Did he ever pet you?
A. Yes, sir.
Q. Called you by the same name when he petted you?
A. He did.
Q. Did he ever pat your cheek and kiss you?
A. I think he might have done it whenever he pleased.
Q. You say he might have done it; I asked if he ever did do it?
A. He did do it.
Q. Did he call you by any other name than Josefita or Josefa then?
A. I do not know.
Q. Did he ever daddle you on his knee, and call you affectionate terms, "My darling"?
91 A. I don't know.

(Question and answer is objected to by Mr. Veeder because it is not possible for the witness or any one else to understand the meaning of the words used.)

The attorney upon the part of the defendants insists that a lack of knowledge of the English upon the part of English-speaking people should not be an objection to the question nor the answer.

The attorney for the plaintiffs insists that new coined words or old words used with entirely new signification, are not appropriate for an examination, either direct or cross.

Q. Did he ever say to you in so many words that you were his child?

A. He did.

Q. Now use the exact words that he used.

A. He told me that I was his daughter.

Q. I ask you to use the same words that he used.

(Objected to by Mr. Veeder because the witness in the preceding question has already answered the question.)

A. I cannot tell the same words that he said. He made me know that he was my father.

Q. Did he make you know that by words?

A. By words.

Q. By what words?

A. He used to tell me that he was my father.

Q. Now tell us what he said just as he told you.

(Objected to by Mr. Veeder because the question has been answered as many as three times in the preceding answers.)

A. I have told you that he told me he was my father. I don't recognize anybody else.

Q. Will you or will you not repeat here the words he used to you when he said he was your father?

(Objected to by Mr. Veeder for the same reason stated in the objection in the last preceding question.)

A. I cannot say more than what I have already said. I don't recognize anybody else as my father.

Q. Do you remember the words he used?

A. Yes, I do. I have been telling you what the words were.

Q. Now put yourself in his place at the time he said he was your father and say to us exactly the same words, if you can, he said to you.

(Objected to by Mr. Veeder because the question has already been answered a half a dozen times in the last preceding questions, and answered fully.)

A. I cannot say more than what I have said.

Q. Were these the words he used to you? "Josefita, I am your father, you are my daughter."

A. He also told me that.

92 Q. Were those the exact words he used?

A. The same. Of course he would always call me by my name.

Q. Now, if there was anything in his words which have been quoted to you that is not correct, will you change it?

A. No.

Q. Do you mean that the words are all right and just as your father used them?

A. Yes, sir; I do.

Q. How often did he say in these words "Josefita, I am your father, you are my daughter"?

A. I don't know whether he told me so often or not.
Q. Did you see him on that ranch as often as a dozen times?
A. I do not know how many times it was.
Q. Did Frank Metzger ever send you to school?
A. No.
Q. The most of that which you have testified about you were informed of, not by Frank Metzger, but by your mother; is that not true?

(Objected to by Mr. Veeder because the question assumes the existence of a fact not brought out by the testimony, and is misleading.)

A. By both, not only by my mother.
Q. Listen to this question again and see if you can answer it.

(Question repeated by master.)

(Objected to because the witness has already answered the question in answer to the last preceding question.)

A. By my mother and father also.
Q. What day of the week is this?

(Objected to by Mr. Veeder because it is immaterial and irrelevant.)

A. Saturday.
Q. What day of the month?
A. I do not know.
Q. What year?
A. I don't know.
Q. What year was last year?
A. Don't know.
Q. Do you know how many months there are in a year?
A. Isn't there twelve?
Q. Don't you think there are thirteen months in the year?

(Objected to by Mr. Veeder because it calls for an opinion.)

A. I do not know.
Q. How many can you count?
A. I can count up to twenty.
Q. How many tens are there in twenty?

93 (Objected to by Mr. Veeder because it is not cross-examination and is irrelevant and immaterial, and because the witness has been sufficiently tested as to her knowledge of dates.)

A. Two.
Q. How many fives?
A. Four.
Q. Do you understand the nature and obligation of an oath?

(Objected to by Mr. Veeder because the question is not proper at this time for any cause or for any purpose.)

A. I do.
Q. State it.

(Objected to by Mr. Veeder because of the same reason as stated in the objection to the last question, and because, if the attorney had any doubt that the witness did not understand the nature of an oath, it was his duty to inquire into it at the time the witness was sworn.)

A. An oath is not to swear the name of God in vain.

Mr. PRITCHARD: This concludes the cross-examination at the present time, notice being given as in the preceding deposition, that attorneys for defendant will ask the court, that the examination be reopened for further cross-examination, on the account of the absence of one of the attorneys for the defendant, these depositions being taken over the objection and protest of the present attorney for the defendant in the absence of said co-counsel.

Attorney for the complainants objects to any further examination of this witness in future, and to any reopening of this case by introducing testimony of this or any other witness upon a future cross-examination, because this testimony is taken after due notice to attorney for defendants, as provided by law and rules of court, and because the absence of co-counsel is no reason, good and sufficient, for a reopening or re-examination of a witness already examined, inasmuch as such absence was not caused, or in any manner due to any conduct of counsel for complainants, and no agreement has ever been entered into by attorney for complainants with attorney for defendants by which the time to take this testimony was to be extended until such time as co-counsel could be present, and because the said co-counsel referred to provided fully for the management of this case during his absence.

Redirect by Mr. VEEDER:

Q. Can you read or write?
A. No.
Q. Do you know anything about dates—that is, anything about giving the time of dates?
94 A. I don't know anything about it.

her
JOSEFITA x MARTIN.
mark.

Las Vegas, September 3rd, 1887.

Adjourned until Thursday morning at 9 o'clock, September 8th. 1887.

THURSDAY, *September 8th*, 1887.

LOUIS KAAHN, being duly sworn, says:

Q. State your name, age and place of residence.
A. Louis Kaahn, fifty-seven; Mora, Mora county, New Mexico.
Q. How long have you resided in Mora?
A. It will be thirteen years next November.
Q. Do you know Henry Korte, the defendant?
A. Yes, sir.

Q. How long have you known him?
A. I have known him since 1859.
Q. Do you know Frank Metzger; and if so, how long have you known him?
A. I have known Frank Metzger since 1849.
Q. Do you know Doloritas Martin, Josefita Martin and Isabelita Martin?
A. Yes, sir.
Q. How long have you known them?
A. I have known them ever since I have lived in Mora. I have been living there about twelve years.
R. State if you know the father of Doloritas, Josefita and Isabelita Martin.

(Objected to by Mr. Pritchard because it calls for an answer upon a subject that the witness cannot positively know anything about.)

A. I could not tell for certain. Frank Metzger in his lifetime claimed them as his children.
Q. Now, state how Frank Metzger claimed them as his children—that is, what he said and did.

(Objected to by Mr. Pritchard because for the reason that what Frank Metzger might have said would not be testimony in this case.)

A. Well he told me on several occasions that he was the father of those children, as I said before.
Q. State about when he last spoke to you of these children, and what he said.
95 A. It was a very short time before he died. I think it was two or three weeks before he died. I was sitting in the store with Frank Metzger. Two of those girls, the youngest one and the one that is married to Cordova, passed the store, and old Frank Metzger said: "There goes my children," and I watched them close. The tears ran down his checks. He said then, those children would be all right; they will have plenty some day.
Q. Is that all his full conversation?
A. That's all. There was a man there present. He died the same day that old Frank Metzger died.
Q. When you speak of the child that married Cordova and the youngest one, do you mean the children of Viviana Martin?

(Objected to by Mr. Pritchard.)

A. Viviana Martin is the mother of them.
Q. Are they two of the three parties in this suit complainants?
A. I think they are. They are.
Q. Where did Viviana Martin live and subsequent to the birth of Doloritas, Josefita and Isabelita Martin?
A. At Frank Metzger's ranch.
Q. At what place is that, if you know?
A. At La Cevolla.

Q. Did Frank Metzger, at the time Viviana Martin was living at his ranch at Cevolla, make frequent visits to that ranch?

(Objected to by Mr. Pritchard.)

A. I don't know.

Q. How long have you known Viviana to have lived on that ranch at Cevolla?

(Objected to by Mr. Pritchard.)

A. Don't know.

Q. Can't you tell about it?

A. No, sir; I have seen her living there. She must have been living there a number of years.

Q. State who supported and provided for Josefita, Isabelita and Doloritas Martin at the time they lived at Frank Metzger's ranch at Cevolla.

(Objected to by Mr. Pritchard.)

A. I cannot tell, because I did not see anything towards support going to them.

Q. State what business Frank Metzger was engaged in at Mora prior to his death.

(Objected to by Mr. Pritchard.)

96 A. He was in general merchandise, stock-raising and farming.

Q. State whether Frank Metzger took an active interest in business up to the time he died.

(Objected to by Mr. Pritchard.)

A. He was tending to the store all the time; never missed a day hardly.

Q. State if Viviana Martin was ever married.

(Objected to by Mr. Pritchard.)

A. I believe not.

Cross-examination by Mr. PRITCHARD:

Q. You say that Mr. Metzger was in the store almost every day. You don't know he had any interest there, do you?

A. From all appearances it did appear to me he had.

Q. You were judging by appearances, were you?

A. Yes, sir. The way he acted in business.

Q. Was that the only reason you had to suppose he was interested in the business?

A. I have seen him in the business all the time. That is the only reason.

Q. Did you have any personal knowledge of the fact that he did have any individual interest in the business at the time of his death?

A. I have not.

Q. Isn't it a fact that the interest that you saw him manifest in and about the business was such that he might very well manifest as a father, father-in-law and grandfather, knowing him as you did to have been a man of business habits for many years previous thereto?

(Objected to by Mr. Veeder because there is no proof or testimony given by this witness that he was the father-in-law or in any way interested by virtue of any such relation in the business conducted by him in Mora, and because the question assumes facts that are not in proof and that is not proper cross-examination.)

A. I could not tell.

Q. If he was the father-in-law and a father and a grandfather, and lived with his children and grandchildren, in your judgment was — anything very remarkable about his manifesting interest in the business of his own son-in-law?

(Objected to by Mr. Veeder because the witness has not testified that he had a son-in-law, or that his son-in-law, if he had one, had any business and because it calls for the opinion of the witness, and is not proper cross-examination.)

97 A. It was nothing remarkable to me; I didn't see any difference.

Q. The testimony you have given in relation to Frank Metzger appearing to have an interest in the concern was merely your opinion, wasn't it?

A. Yes, sir.

Q. You never heard Frank Metzger say during the last portion of his life that he had no personal — in the business, did you?

A. No, sir; he never said he did or he did not.

Q. What business are you referring to in this testimony?

A. Merchandise.

Q. So far as you know at the time of Metzger's death, he might have had no interest whatever in the business; is it not true?

A. He might have had, and he might not.

Q. Do you know of your own knowledge that he did have any interest in the business at the time of his death, and for ten years previous to his death?

A. I could not tell for certain. The business might have been all his own, or nothing at all.

Q. He was quite an old man, wasn't he, when he died?

A. Yes, he was quite old.

Q. Wasn't he too old to be actively engaged in business of any kind?

A. No, sir.

Q. What kind of business could he have been actually engaged in at his age?

A. Any business, because he looked so strong and stout.

Q. Do you know anything about the condition of his eyesight for some years before his death?

A. I know he was always nearsighted since I knew him.

Q. Had his eyes failed him very considerably in the last years of his life?

A. I don't know.

Q. Do you know Henry Korte?

A. Yes, sir.

Q. Did he have anything to do with the business you spoke about?

A. I don't know; I never saw any agreement or nothing. For that reason I say I don't know.

Q. Any appearances about the business same as the other man you testified about?

A. Well, I saw him there all the time. He occupied most of his time down at the ranch farming.

Q. Was Korte in business?

A. I don't know. I don't know whose business it was, Korte, Metzger or whose.

98 Q. Do you know whether Korte was a man of means or not during the last years of Metzger's life and previous?

(Objected to by Mr. Veeder, because it is not proper cross-examination, and because it is irrelevant and immaterial.)

A. Cannot tell.

Q. Do you know whether he was interested in the ranches, stock and such things, during that time?

A. Who?

Q. Korte.

A. I don't know.

Q. Then so far as you know Korte might have owned all the merchandise business and Frank Metzger none of it; is not that true?

A. I cannot tell how that business was.

Q. Why don't you answer the above question directly, "yes" or "no"?

(Objected to by Mr. Veeder because the question has already been answered many times in answers to the preceding questions.)

A. Because I don't know anything about their business.

Q. I will ask that question again of you, and I insist that you answer "yes" or "no."

(The question is repeated to the witness by the master.)

(Objected to by Mr. Veeder because the question has already been answered as fully as the witness is able to answer in the preceeding questions.)

A. He might have owned all or he might have owned nothing, as far as I know.

Q. Do you know that Mr. Korte didn't own all that business?

A. No.

Q. Do you know that he had not owned it all for over ten years?

A. No.

Q. Do you know of any other children of Frank Metzger's than those you have testified to?

(Objected to by Mr. Veeder, because it is not proper cross-examination.)

A. Mrs. Korte; I am not certain, either.
Q. You are not certain about any of them, are you?
A. No, sir; I am not certain to any.

Redirect examination by Mr. VEEDER:

Q. State whether or not Frank Metzger during the last years of his life took the same interest in the business that he was
99 carrying on at Mora, that he did ten years prior to his death?

(Objected to by Mr. Pritchard because there is no illusion in the cross-examination to any interest that Metzger might have taken ten years before his death, nor is there any testimony showing that the witness was familiar enough with Metzger's business to testify on that point, and that the question touches entirely a new matter.)

A. I did not see any difference.
Q. State how far you lived from him in the town of Mora?
A. About a hundred yards, more or less.
Q. Did you live that distance from him during the thirteen years you lived in Mora?
A. No, sir; I was next neighbors to him for years before until the last six years.

Recross-examination by Mr. PRITCHARD:

Q. Are you and Henry Korte on very friendly terms?
A. Yes, sir.

(Mr. Pritchard, attorney for the defendant, states that he reserves the right to ask a reopening of this testimony hereafter for the cross-examination for the reasons stated as to other depositions in this case.)

Mr. Veeder, attorney for complainant, denies the right to reopen the case for further cross-examination of witness, and objects to it being done for the reasons stated in the objection made to a similar statement to the former depositions.

LOUIS KAAHN.

Adjourned until Friday morning at 9 o'clock, September 9th, 1887.

FRIDAY, *September 9th*, 1887.

MANUELITA ESQUIBEL DE VELASQUEZ, being duly sworn says:

Q. State your name, age and place of residence?
A. Manuelita Esquibel. I am not certain about my age, am about forty. I live at Red River.
Q. Where did you live before you went to Red River?
A. La Cevolla.

Q. How many years since you left La Cevolla, more or less?
A. Two years.
Q. Do you know Viviana Martin, if so how long have you known her?
A. I do since 1854.
Q. Where has Viviana Martin lived since then?
A. She lived at Cevolla, at the ranch of Don Francisco.
Q. When you say Don Francisco, who do you mean, give his full name?
A. Francisco Metzger.
Q. How near did you live to the house of Viviana Martin upon the ranch of Frank Metzger at Cevolla, when you resided at Cevolla?
A. About twenty yards more or less.
Q. Did you know Frank Metzger, and how long have you known him?
A. Yes, ever since 1854, from the time I knew Viviana.
Q. Did you continue to know him up to the time of his death?
A. I did.
Q. Do you know Doloritas, Josefita and Isabelita Martin, and if so how long have you known them?
A. Yes, sir; I have known them ever since they were born.
Q. State, if you know, who their mother is.
A. Viviana Martin.
Q. State, if you know, who their father is.
A. I don't know anybody else to be their father but Don Francisco.
Q. How do you know that Don Francisco is their father?
A. Because he used to say so, as well as Dona Viviana.
Q. Did you hear Frank Metzger in any way recognize them as his children, and if so what did he say?

(Objected to by Mr. Pritchard.)

A. He called them his daughters and treated them as if they were such.
Q. At the time you were living at Cevolla near Viviana Martin, as you have stated, did you frequently visit the house of Viviana?

(Objected to by Mr. Pritchard.)

A. Yes, sir.
Q. How frequently?
A. I visited her every day.
Q. Did you see Frank Metzger there, and if so, how often?

(Objected to by Mr. Pritchard.)

A. Yes, sir; sometimes he would stay there one week, other times three or four days.
Q. How frequently did he come there, to the house of Viviana, and what portion of his entire time did he spend there?
A. Most every two weeks. He spent the most of his time in La Cevolla.

Q. At what place in Cevolla?
A. At his ranch where this woman lived.
Q. What woman do you mean?
A. Dona Viviana.
101 Q. State where he ate and slept at Cevolla, and at the house of Viviana.
A. At the house of Dona Viviana.
Q. How many rooms were there in that house of Viviana at Cevolla?
A. Three.
Q. State in what room Metzger slept while at the house of Viviana at Cevolla.
A. In the room where Dona Viviana slept.
Q. How many beds were there in that room at that time, if you know?
A. Just one bed.
Q. State if you know whether Viviana and Doloritas and Josefita and Isabelita ate at the same table with Frank Metzger while he was at the same house of Viviana at Cevolla?
A. They did.
Q. State if you know who furnished the food and clothing for Viviana, for Doloritas, Josefita and Isabelita?
A. Don Francisco Metzger.
Q. Did he do so all the time while you knew them at Cevolla, while they lived at the house of Frank Metzger?
A. All the time.

her
MANUELITA ESQUIBEL DE x VALASQUEZ.
mark.

(Cross-examination by Mr. Pritchard not wished.)

Adjourned to Monday morning, Sept. 12th, 1887, at 9 o'clock.

SEPT. 14TH, 1887.

Testimony Taken after the Adjournment of Sept. 12th, 1887.

ANTONIO DOMINGO LOPEZ, being duly sworn says:

Q. What is your name, age and residence?
A. Antonio Domingo Lopez, my residence is at Rincon Tecolote, San Miguel county; I am not sure of my age, it is about fifty years, more or less.
Q. Are you acquainted with Doloritas, Josefita and Isabelita Martin and Henry Korte?
A. Yes, sir.
Q. Did you know Francisco Metzger in his lifetime, if so how long have you known him?
A. Yes, sir; I have known him about thirty years, or thirty-two or thirty-four years, I am not certain.
Q. Do you know Viviana Martin, if so how long have you known her?

A. Yes, sir; I have known her since she was a child.

102 Q. Who is the mother of Doloritas, Josefita and Isabelita Martin, if you know?

A. Viviana Martin.

Q. Do you know who the father of these three persons are, if so state, and state also how you know.

A. I understand Don Francisco is their father. At the time I was working for him I saw that he was supplying them, supporting both houses, Dona Viviana and her mother.

Q. Where did Dona Viviana live?

A. At the ranch of La Cevolla.

Q. At whose house?

A. At the house of Don Francisco.

Q. Now where did Don Francisco live at the time you knew Viviana to be living in his house at Cevolla?

A. He lived in both parts, sometimes at his ranch and sometimes at his home in Mora.

Q. What business had he at Mora?

A. Then he had a mercantile business and was supporting the mother of Viviana.

Q. What business had he at La Cevolla; what property had he there?

A. He had a ranch and farm there.

Q. Well, did he have anything else besides his ranch and farm?

A. He had his horses.

Q. Well, did he have a store at any time there?

(Objected to by Mr. Pritchard.)

A. The woman had a little store.

Q. I didn't ask you if the woman had a little store, I asked you if he had a store?

A. He had it himself.

Q. In what house did Frank Metzger live in Cevolla, with reference to the house that Viviana lived in?

A. He lived in the same house where she did.

Q. How long did she live in that house, that is, when did you first know her to be living in that house?

A. The first time that I knew her, was when I was attending his farm.

Q. When was that?

A. It was in 1866.

Q. Do you know where she lived prior to 1866?

A. I knew her to live at La Junta first.

Q. State whether or not she had been living to your own knowledge at the ranch of Frank Metzger at Cevolla, before you went there to work at the ranch in 1866?

A. She did live there.

Q. Do you know what relation- existed between Frank Metzger and Viviana Martin while she was living at that ranch, if so just state what they were.

103 A. They lived as husband and wife, because I was looking at them; because I saw them, and whenever he came to the ranch he treated her as his wife.

Q. State if you know where they slept when Metzger was at the ranch.

A. They slept in her own room and in her own bed.

Q. Did you ever hear Frank Metzger say anything about Doloritas, Josefita and Isabelita and whose children they were? If so what did he say?

(Objected to by Mr. Pritchard.)

A. He said they were his children.

Q. If you know, state how he treated them and acted towards them.

A. The same as if he would his own children.

Q. If you know, state who supported them with clothes and food.

A. Their mother.

Q. Where did she get it?

A. She got it from Don Francisco.

Q. When Don Francisco was at the ranch, where did he eat his meals?

A. There at the same house, she assisted him.

Q. At the same table with Dona Viviana and the children?

A. ——.

Q. How many years did you work for Frank Metzger from the year 1866?

A. Eight years the first time.

Q. Did you work afterwards for him and any one else?

A. After I worked eight years I went home and stayed four years and after that I went to work again at the ranch, and then I worked four years.

Q. When you went to work the second time, what relations, if you know, existed between Metzger and Korte with reference to the cattle you worked with, and the other business?

A. They were in partnership with the cattle and other business.

Q. How do you know they were in partnership?

A. Because they said so.

Q. Both of them?

A. Yes, sir.

Q. What other business had they besides those cattle?

A. They had horses, mercantile business and were engaged in agriculture.

Q. State whether or not they cultivated the land they had.

A. They did, cultivated all of it.

Q. How many different pieces of land had they to your knowledge, all of it, state where they were?

(Objected to by Mr. Pritchard.)

104 A. One in Cevolla, another at the ranch of the Estrella I heard they had one at Agua Negra, they said they had one,

but I don't know. He had another at the town of Mora. They had some houses at the town of Mora, that is all I know.

(Objected to by Mr. Pritchard because he testifies to hearsay.)

Q. State whether or not they had a ranch to your knowledge at Buena Vista. If so what kind of a ranch was it?

(Objected to by Mr. Pritchard.)

A. They had a ranch there, but before Metzger died he conveyed it to Dona Viviana Martin.

Q. When you went to work for them the second time, when they employed you, when you say they were partners, under what name was that business carried on?

A. Senor Henry was manager.

(Mr. Catron objects to the answer and asks to have it struck out as not being responsive.)

Q. In what name was all the business carried on when you worked for them the second time?

A. The two employed me. They both said it belonged to the two.

Q. When you quit working how many cattle were there?

(Objected to by Mr. Pritchard.)

A. I turned over four thousand and eighty-seven.

Q. State whether or not you were in charge of these cattle.

A. I was just herding them, I was not responsible.

Q. You mean to say that you took care of the cattle?

(Objected to by Mr. Pritchard.)

A. Yes, sir; I was boss of them.

Q. Were there any other stock besides cattle that you had under your care, if so, what were they and how many?

A. There were thirty-five mares and about eighteen horses.

Q. Who paid you for your services for taking care of those cattle and horses?

A. Don Francisco and Senor Henry, the two.

Q. Who gave you orders and directions in reference to caring for them?

A. Senor Henry, he was the only one that came there where I was.

Q. Now what did you say who gave you orders and directions about them when you went to Mora?

(Objected to by Mr. Pritchard.)

A. When I went to Mora Don Francisco did.

Q. While you were at the Arroyo del Yutas with the cattle who managed and controlled the business at Mora?

(Objected to by Mr. Pritchard.)

A. Don Francisco did.

Q. Do you mean when you use the name "Don Francisco," to refer to Francisco Metzger?

A. I do.

105 Q. When you use the name of "Henry or Senor Henry," do you refer to the name of Henry Korte?

A. I do. I only know him by that name.

Cross-examination by Mr. PRITCHARD:

Q. How old is Doloritas, the daughter of Viviana Martin?

A. I do not know.

Q. Where were you living when she was born?

A. When I came she was already born.

Q. Do you know Josefita, the daughter of Viviana Martin?

A. I do.

Q. How old is she?

A. I don't know their age.

Q. Where were you when she was born?

A. I was there working in the house.

Q. You say you were working in the house, what were you doing in the house, what kind of work?

A. At times I was taking care of the cattle that was near the ranch at the time, and at other times I worked generally around the house.

Q. How old is Isabelita?

A. I do not know; she is the youngest.

Q. How large was Doloritas when you first saw her?

A. About two or three years old.

Q. Was that the first time you had been up to the ranch, when you saw her at the time you speak of?

A. This was the first time I went there, and was there four months before I went to work.

Q. Where did you live before you went there to work?

A. I lived at Chemihero.

Q. How far was that from the ranch of Frank Metzger?

A. It may be eight miles or more, I don't know, it is on the other side of the mountains.

Q. Did you ever hear Henry Korte and Frank Metzger discuss their partnership matter- in your presence?

(Objected to by Mr. Catron as not being cross-examination.)

A. I did.

Q. Where?

A. There at the house.

Q. Who was present?

A. I don't know.

Q. When was it?

A. When they allowed me to go to Arroyo Yalita.

Q. Well, you know how many years that was, ten, twenty, thirty years; what time was it?

A. Fourteen years.

106 Q. Was it about fourteen years ago that you first went into their employ?

A. From the first time I worked for them it is twenty-six years.

Q. Now, do you mean to say that you went to work for Henry Korte and Frank Metzger as long ago as twenty-six years?

A. At this time twenty-six years ago. I was not employed by Mr. Henry, it was by Don Francisco.

Q. Who do you mean when you say them?

A. Don Francisco and Senor Henry.

Q. Do you remember very well what they said when they discussed their partnership in your presence?

A. Yes, sir; I do.

Q. Word for word, what did they say?

A. They said so when they employed me to work for them.

Q. Now tell what each of them said, using the same language that each one of them said, if you can?

A. They said all the property belonged to both.

Q. You cannot tell the date when they made this talk?

A. I cannot.

Q. You are sure it has been over fourteen years, are you?

(Objected to by Mr. Catron because there is no evidence that it has been over fourteen years, and the witness has not stated that it has been fourteen years, he assumes the existence of a fact that has not been proven and it is not cross-examination.)

A. I am not quite sure, but I think it is that time.

Q. Is it any more than that time do you think?

A. I think it less rather than more.

Q. Of what time of the year was it?

A. The twelfth of October was the day I left for that place.

Q. How do you know that it was the twelfth of October that you left for that place?

A. Because they employed me to start with them that day.

Q. Now do you know the year, you have given us the day of the month, can you give us the year?

A. I do not remember the year.

Q. Was it 1871?

A. I do not remember.

Q. Was it in 1870?

A. I don't know.

Q. Was it in 1869?

A. I do not remember, sir.

Q. Was it in 1868?

A. I do not remember.

107 Q. Were you working there 1868 on the ranch?

A. I was working on the ranch the first time I commenced to work.

Q. Do you know anything about the business of those two men, how they were carrying it on?

A. I knew that the property belonged to both of them.

Q. At this time you have just referred to, in 1868, do you mean that the property belonged to both of them?

A. At that time Señor Henry was not in the business.

Q. Was he in the business in 1869?

A. I do not remember.

Q. How did you remember that they were both interested in the business?

A. Because they said so to me, that they were in partnership of the lands, cattle, and all other property that they had.

Q. Do you know whether or not Don Francisco sold his interest to Henry Korte in the business after the time you refer to in which they discussed their partnership?

A. I do not know, sir.

Q. Do you know in whose name the business was carried on, and the lands you have referred to held when you was employed by both of them as you have stated?

A. It was managed by both.

Q. You mean the business and lands were owned by both at that time?

A. Yes, sir, I do.

Q. You know that to be a fact, do you?

A. I do.

Q. You know exactly the interest each one held at that time, do you, in the business and property?

A. I don't know the interest that each one had separately. I know that the property belonged to both.

Q. Do you know how long it had belonged to both before that time?

A. I do not know.

Q. When they spoke to you about both of them being interested in the business and property, did each of them speak to you away from the other?

A. They both together said so and they employed me to go with them.

Q. Did they employ you together?

A. Yes, sir, they did.

Q. Which one did the most of the talking?

A. The one that sent for me was Don Francisco, and when I went to the house both of them talked to me.

Q. Have you sworn that Don Francisco told you that Doloritas was his daughter?

A. Yes, sir.

108 Q. When did he tell you this?

A. When he was living with my friend, Viviana, he told me that he had had three children by her.

Q. How did he come to tell you this?

A. At the time I was working for him, it happened that sometimes he would raise my salary, and at others he would lower it. He said to me, Don't you see the family I am having by this woman, and those that I have in Mora?

Q. Is that all he said about it?

A. Yes, sir; that is all.

Q. He didn't name or point out Doloritas as one of those children, did he?

A. Yes, he named her, that and the other two; he didn't have any more family after that.

Q. Did he call each one by her name?

A. Yes, sir, he did.

Q. Who was present when he did that?

A. Their mother.

Q. Who else?

A. I don't remember.

Testimony on Behalf of the Defendant.

Present: Col. G. W. Pritchard on behalf of the defendant; John D. W. Veeder on behalf of the complainant-; witness ARTHUR MORRISON.

The witness being duly sworn deposes and states as follows:

Q. Where do you reside?

A. In Las Vegas, New Mexico.

Q. How long have you been residing here?

A. Forty-one years.

Q. Did you know Frederick Metzger in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. I knew him ever since I came to this Territory.

Q. About when did he die?

A. In 1884 or 1885, or thereabouts.

Q. Were you intimately acquainted with him during his lifetime?

A. Yes, sir.

Q. Where was he living when he died?

A. In Mora county.

Q. How many years have you known him there?

A. Since 1850, until the time he died.

109 Q. Did you know him there when he was engaged in business?

A. Yes, sir.

Q. What kind of business?

A. The first years of my acquaintance with him he was engaged in the general merchandise.

Q. Do you remember whether you ever done any business or any writing for him at that time?

A. I have done some writing for him at different times.

Q. Look at this paper and state whether you ever saw that paper before or not.

A. Yes, sir; that paper was written by me.

Q. About what time was it written by you?

(Objected to by counsel for complainant- on the ground that the paper speaks for itself, and is not the best evidence.)

A. It was written by me at the time I made it in 1875.

Q. State whether or not you was present at the time it was signed.

(Objected to by counsel for complainant- on the ground that it does not call for the best evidence; no proper foundation has been laid for it, and because it is incompetent, irrelevant and immaterial.)

A. To the best of my recollection, it was signed by the parties. It is so long ago I cannot recollect all about it.

(Counsel for complainant- moves to strike out the answer of witness on the ground that it is not responsive to the question.)

Q. State what you do recollect about its being signed.

(Objected to by counsel for complainant- on the ground that it does not call for the best evidence, and no proper foundation has been laid for its introduction, and because it is incompetent, irrelevant and immaterial.)

A. I remember about the matter that I drew up that paper in the town of Mora, at Mr. Metzger's residence, and I went from there to see Viviana Martin at the Cevolla or Buena Vista, where she lived, about seven miles from Mora. I read to her that paper, and, to the best of my recollection, she signed it, but do not recollect if all the other parties were present at that time or not.

Q. Was it signed for anybody who was not present at that time?

(Objected same as to foregoing question.)

A. I do not recollect who was present besides Viviana Martin. Several persons were in the room, but do not remember who were there.

(Same objection as before to come in before the answer.)

110 Q. State whether or not Viviana Martin was the mother of Josefita, Isabelita and Doloritas, the persons whose names are mentioned as complainants in this suit?

A. Yes, sir; she was the mother of those children, and is now.

Q. This was in Mora county, wasn't it?

A. Yes, sir.

Q. Do you remember how she signed it; whether she signed her name, or whether she signed it by her mark?

(Objected to by counsel for complainant on the grounds that it is not the best evidence, no proper foundation has been laid for its introduction, because the witness has already stated he does not recollect about signing the paper inquired about, and because it is incompetent and immaterial.)

The solicitor for the defendants, after having submitted the paper in question to the inspection of the attorney for complainant-, now for the first time offers the same in evidence, and asks the same to be marked "Exhibit L."

Counsel for complainants objects to the statements made by the

counsel for defendants, because he has not been sworn as a witness in the cause, and moves to strike out said statement. He further objects to the introduction of "Exhibit L," because the same has not been introduced in evidence properly, and has not been identified by any witness; that no proper foundation has been laid for its introduction, and because the same is incompetent, irrelevant and immaterial.

Q. Were you living in Las Vegas in 1873?

A. Yes, sir.

Q. Did you know Louis Hommel at that time?

A. Yes, sir.

Q. Do you remember when he published in Las Vegas about that time a paper known as the Las Vegas Gazette?

A. I do recollect the paper was published by Mr. Hommel; do not recollect whether it was that year or not.

Q. Well, it was about that time?

A. To the best of my recollection it was about that time.

Q. Well, was the paper I just referred to the paper he was publishing?

A. The Las Vegas Gazette was the paper he was publishing.

Q. State whether or not you knew the handwriting of Louis Hommel.

(Objected to by counsel for complainant on the ground it does not call for the best evidence, no proper foundation has been made for its introduction, and because it is incompetent, irrelevant and immaterial.)

111 Q. State your means of knowing and being familiar with this handwriting.

(Same objection by counsel for complainant as to the foregoing question.)

A. I have had a large amount of correspondence with him, and received letters from him, and we were together and employed in the translation of deeds in the county records more, and I saw him writing almost every day, together with me, and therefore I am well acquainted with his handwriting.

(Last answer of witness objected to by counsel for complainant, because of the conclusion, and moves to strike out the same.)

Q. Look at these two papers, and tell us whether you recognize the handwriting.

(Objected to because the papers are not the best evidence, and no proper foundation has been laid for its introduction, and because it is incompetent, irrelevant and immaterial.)

A. It is undoubtedly the handwriting of Mr. Hommel. This is his handwriting.

Q. Whose handwriting, if you know, is the handwriting to these papers?

(Objected — because it is not the best evidence, and no proper

foundation, and because it is incompetent, irrelevant and immaterial.)

A. This is Louis Hommel's signature, and is Louis Hommel's handwriting.

Q. Does that answer apply to both papers?

(Same objection by counsel for complainant- as to the foregoing.)

A. Yes, sir.

Solicitor for the defendant, after submitting the papers referred to by the witness to the attorney for the complainants for inspection, now for the first time offers them in evidence, and asks that they may be marked "exhibits" respectively "Exhibit N" and "Exhibit O."

Counsel for the complainant- objects to the introduction of the Exhibits "N" and "O," because they have not been proven or identified by any competent proof, because they are not the best of evidence, no proper foundation has been laid for their introduction, and because they are incompetent, irrelevant and immaterial.

Solicitor for the defendant offers in evidence the Las Vegas Gazette heretofore offered in evidence, and marked "Exhibit —."

112 Last exhibit objected to by counsel for complainant because such offer is a mere tender accompanied with no exhibit, because no paper is identified, because it is not the best evidence, no proper foundation has been laid for its introduction, and it is incompetent, irrelevant and immaterial.

Cross-examination:

Q. State whether or not Exhibits "N" and "O" were written prior to the commencement of this suit or subsequent.

A. I do not know anything about it.

ARTHUR MORRISON.

Subscribed and sworn to before me this 19th day of April, A. D. 1880.

WILLIAM NAEGLIN, witness, being duly sworn, deposes and says as follows, to wit:

Q. Where do you live?

A. Buena Vista (Good Sight), Mora county, New Mexico.

Q. Are you the administrator of the estate of Henry Korte, deceased?

A. Yes, sir.

Q. How long have you been the administrator?

(Objected to on the ground that it does not call for the best evidence, and is incompetent, irrelevant and immaterial.)

A. About nine months.

Q. State who was in charge, if you know, of the property of that estate.

A. I am in charge.

Q. State the kind of personal property that came into your possession as such administrator, if any, and the value thereof belonging to said estate.

(Objected to by counsel for complainant-, because it does not call for the best evidence, no proper foundation has been laid for it, and because it is incompetent, irrelevant and immaterial.)

A. Seven cows, three calves, two yoke of oxen, three horses, one mule, four wagons, one threshing machine, one cider machine, corn-sheller, about twelve good plows, blacksmith tools, about three thousand pounds of apples, about one thousand pounds of hay, and some furniture in the house.

Q. Is that all the personal property?

A. There was some merchandise.

Q. About what was the value of all the personal property that you came into possession of?

113 (Objected to on the ground that it does not call for the best evidence, no proper foundation has been laid for it, and because it is incompetent, irrelevant and immaterial.)

A. About six hundred dollars.

Q. Are you familiar with the real estate of said estate?

A. Yes, sir.

Q. State what it consists of or what it consisted of at the time you were appointed administrator.

A. The Buena Vista ranch, Cevolla ranch, two houses and lots in Mora; that is all.

Q. This property is all in the county of Mora?

A. Yes, sir.

Q. Where are you residing?

A. On the Buena Vista ranch.

Q. Are you familiar with the prices of ranches in that locality?

(Objected to by counsel for complainant- because no proper foundation has been laid for it.)

A. Yes, sir.

Q. State your means for knowing the value of property in that section of country.

A. Property has been sold up there, but I cannot tell just what it is worth.

Q. These things have been ta-ked over in that community as to the prices of ranches?

(Objected to by counsel for complainant- on the ground that it does not call for the best evidence, because it calls for hearsay testimony, and is incompetent, irrelevant and immaterial.)

A. Yes, sir.

Q. What is your occupation?

A. Ranchman now.

Q. Now, from your knowledge of the price of ranches, and of your

knowledge of the Buena Vista ranch, what would you say that ranch is reasonably worth?

(Objected to by counsel for complainant- on the ground that the witness has not shown sufficient means of knowledge, because no proper foundation has been laid for it, and because it is incompetent and immaterial.)

A. The ranch is worth about seven thousand dollars.
Q. State whether you are familiar with the Cevolla ranch.
A. Yes, sir.
Q. What is that ranch worth?

(Objected to by counsel on same ground as before stated in objection to question preceding the last question.)

A. The ranch is worth about three thousand dollars.

114 Q. Are you familiar with the property in the town of Mora?
A. Yes, sir.
Q. How far do you live from Mora?
A. About seven miles.
Q. Are you frequently in the town of Mora?
A. Yes, sir.
Q. Have you any knowledge of the prices of real estate in that town?
A. Yes, sir.
Q. Upon what is that knowledge based?
A. Well, there has been some property bought there since I have been in the country.
Q. What other means have you of knowing?
A. That is all.
Q. Have you ever talked with parties there in Mora about the price of real estate there in Mora?

(Objected to by counsel for complainant- because it is incompetent, irrelevant and immaterial.)

A. Oh, yes, sir.
Q. State, taking into consideration your knowledge of the prices of real property in Mora, and your familiarity with the knowledge of the house and lot belonging to said estate, what they are reasonably worth.

(Objected to on the ground because the witness has not shown sufficient means of knowledge, and because no proper foundation has been laid for it, and because it is incompetent, irrelevant and immaterial.)

A. Those two houses and lots there are worth about two thousand dollars.
Q. Who has had the management of the Buena Vista ranch last year?
A. I did.
Q. What has been, if any, the profits of that ranch?

A. About three hundred dollars.
Q. From what particular things did those profits arise?
A. Apples, wheat, oats, corn.
Q. Have any rents or profits accrued to you from either the Cevolla ranch or the Buena Vista or Mora property?
A. Yes, sir.
Q. State what they are.
A. Rent of houses in Mora.
Q. How much?
A. About eighty dollars.
Q. Anything from the Cevolla ranch?
A. No, sir.

115 Q. State whether or not, you came into possession as administrator of any books, papers, receipts or documents belonging to the safe of Henry Korte.

(Objected to by counsel for complainant-, because it calls for secondary evidence and that no proper foundation has been laid for it and because it is incompetent, irrelevant and immaterial.)

A. Yes, sir.
Q. State whether or not among such books, papers, documents, or among the effects of the said Korte you found any deeds, mortgages, evidence of indebtedness relating to property in the State of Missouri, or debts due from any one in that State, or as to any other place outside of the county of Mora, Territory of New Mexico.
A. No, sir.
Q. State whether or not, you know of any property or money of said estate that has been removed from the Territory of New Mexico to any other State or Territory, or any other place outside of the Territory of New Mexico.

(Objected to by counsel for complainant- because it is incompetent, irrelevant and immaterial.)

A. I do not know.
Q. Were you present in Mora on or about the 12th day of April, 1890, when Charles Korte testified before Mr. Gortner in this case?
A. Yes, sir.
Q. Do you remember anything about a book of invoices which was presented or introduced there at that time during the testimony of Charles Korte?
A. Yes, sir.
Q. Had you ever seen that book before?
A. Yes, sir.
Q. When and where?
A. At Buena Vista ranch.
Q. Before or after Korte died?
A. After he died, about January, 1889.
Q. State whether you had anything to do with that book.
A. Yes, sir.
Q. What?
A. I received it after I was appointed administrator.

Q. From whom did you receive it, and how did it come to you?
A. I found it among some papers of Henry Korte's.
Q. How did you happen to find it?
A. When I was looking for some papers and receipts as administrator of the estate. I was looking for these things and found it.
Q. Had you possession of the book after that?
A. Yes, sir.

116 Q. *How* as individually *as* administrator of the estate who had possession of the book, if you know, from the time it came into your possession as administrator up to the time it was introduced in evidence in Mora during the testimony of Charles Korte?
A. I had it in my possession.
Q. State whether or not you received that book as administrator together with the papers and effects of Henry Korte?
A. Yes, sir.
Q. Are you familiar with the handwriting of Henry Korte?
A. Yes, sir.
Q. Upon what is that familiarity based?
A. I have seen him write some letters and seen him sign his name to his will.
Q. State whether or not his handwriting was in that book?

(Objected to by counsel for complainant on the ground of no sufficient means of knowledge by him in reference to the matter about which he is to testify, and because it was incompetent, irrelevant and immaterial.)

A. It was.
Q. How do you know it was?
A. I know by the handwriting.
Q. Did you examine the book?
A. Yes, sir.
Q. State whether or not you examined the book frequently?
A. Yes, sir.
Q. For what purpose?
A. To find out whether it was his own, and to find out whether he was his own boss or whether he had partners.

(Here solicitor for defendant reoffers said book of invoices as evidence in this case.)
(Counsel for complainant objects to all the foregoing testimony of the witness with reference to a book, and moves to strike out the same for the reasons that during the giving of the testimony of that witness on that subject, and during his entire examination no book has been shown him or identified by him as being any book heretofore offered in evidence except so far as the same may be gathered from his statements, and that counsel does not know nor can witness testify as to a book which is not before him and during his examination has not been exhibited to him nor examined by him. Further objects to the reoffering in evidence of any exhibit in connection with the testimony of this witness because the same has not been examined by the witness nor identified by him as being any-

thing about which he has been testifying; because the same is incompetent, irrelevant and immaterial.)

Q. Were you present this morning when Arthur Morrison testified in this case?

117 A. Yes, sir.

Q. Were you present when Exhibits "N" and "O" were offered in evidence during the testimony of Mr. Morrison?

A. Yes, sir.

Q. Now look at Exhibits N and O, and state whether or not, you ever saw them before.

A. Yes, sir.

Q. When and where?

A. In the house of the Buena Vista ranch, Mora county, January, 1889.

Q. State what connection you had with those papers and in what capacity and all about it.

A. I found those papers among some other papers of Henry Korte's; I kept them and took them to Mora and I handed them to Colonel Pritchard, counsel for defendant.

Q. State whether or not, those papers came into your possession as administrator of the estate of Henry Korte, and whether you retained them in your possession as such administrator up to the time you handed them to your attorney.

(Objected to by counsel for complainant- for the reason that the question is leading and the witness has already stated how he came into possession of the papers and because it is incompetent, irrelevant and immaterial.)

A. I found these papers with some others of Henry Korte's and I have had these in my possession ever since as administrator.

Q. Did you know Frederick Metzger?

A. Yes, sir.

Q. Any relation of yours?

A. Yes, sir.

Q. What?

A. Uncle.

Q. Did you see him in 1874?

A. Yes, sir.

Q. When and where?

A. In Mora, New Mexico.

Q. For what length of time did you see him in that year?

A. About two months.

Q. Were you residing there at the time or visiting?

A. I was visiting there.

Q. With whom did you stop if any?

A. With Henry Korte.

Q. Where was Frederick Metzger living at that time?

A. He was living with Henry Korte.

Q. Did you have any conversation with your uncle about business or otherwise during that time?

A. Yes, sir.

118 Q. Was anything said about whether he was in business or not, and if so, what was said?

A. Yes, sir.

Q. State everything that was said.

A. He told me he sold all his property to his son-in-law, Henry Korte. I stayed with him about two months in the house and I then went to Colorado.

Q. State whether or not you saw Henry Korte at that place at that time you were there.

A. I did.

Q. What was he doing?

A. Looking after his business.

Q. What business?

A. His store and the ranch at Buena Vista.

Q. Whose store?

A. Henry Korte's store.

Q. How did you know it was Henry Korte's store?

A. The old man Metzger told me he sold everything to Henry Korte.

Q. Did you see who was managing the store and business?

A. Yes, sir.

Q. Who was?

A. Henry Korte.

Q. What did you see him doing?

A. Selling goods in the store, working around the house. Went down to his ranch once or twice a week, looking after his working hands doing the work for him on the ranch.

Q. State whether Henry Korte had a family at that time.

A. Yes, sir.

Q. Where did his family live, in the same building with his store or in another building?

A. The same building at the store.

Q. At whose table did Frederick Metzger take his meals?

A. At the table of Henry Korte and wife.

Q. State whether or not Frederick Metzger was an old man at that time.

A. He was an old man.

Q. Did he seem to give himself any concern about the business there?

A. He did not.

Q. Why do you say that?

A. Because he had no interest in it.

Q. How did you know he had no interest in it?

A. Because he told me he sold out to his son-in-law. Was getting too old to do any more business.

Q. Mr. Naeglin, about what debts were due the estate of Henry Korte when you became the administrator of the estate of Henry Korte?

119 (Objected to by counsel for complainants because it calls

for secondary evidence, no proper foundation has been laid for it and incompetent, irrelevant and immaterial.)

A. Very little, about forty or fifty dollars, that is all.

Cross-examination:

Q. When did you come to New Mexico to live?
A. I came here to live in 1888.
Q. Are you a relative of Henry Korte?
A. Yes, sir, a son-in-law.
Q. When were you married?
A. In 1887.
Q. How many times had you been to New Mexico prior to your marriage with Henry Korte's daughter?
A. Once.
Q. And that was at the time at which you say you stayed two months?
A. Yes, sir.
Q. How many times had you seen your uncle, Frank Metzger, prior to 1874?
A. I never seen him before that I can remember of.
Q. How old are you now?
A. Thirty-two years old.
Q. How old were you in 1874?
A. About seventeen years old.
Q. You stopped with your uncle?
A. I stopped with Henry Korte and his family, and the old man, as they were living all together.
Q. They all lived in the same house, ate from the same table, and lived together generally as one family, I mean Frank Metzger, Henry Korte and his wife?

(Objected to by counsel for defendant for the reason that it calls for a conclusion.)

A. No, sir, Frank Metzger was living with them as near as I could find out.
Q. You took particular pains at that time to find out just how that was, did you?
A. Yes, sir.
Q. What interest had you in finding out at that time whether Frank Metzger lived with Henry Korte and wife, or whether Henry Korte and wife lived with Frank Metzger?
A. Because he told me that he did not own the property, the house he was living in; that he was only stopping with them.
Q. Why was it of interest to you to find out that?
A. Because I come to the country and stopped with them and I saw that while I was stopping with them, how it was.
120 Q. Tell me what you saw that told you that Frank Metzger was living with Henry Korte and not Henry Korte with Frank Metzger?
A. Because Frank Metzger told me that.

Q. Was that all that Frank Metzger ever told you?
A. Yes, sir; that was about all, as near as I can remember, it has been a pretty long time, I was only a boy.
Q. You went to Frank Metzger then and asked him how it was, didn't you?
A. As near as I can remember, he told me so in the house there.
Q. Who began that conversation?
A. I don't remember.
Q. Frank was very talkative about his business, was he not?
A. He never told me much that I can recollect.
Q. You asked him in that conversation why he had sold out, did you?
A. No, not that I remember of.
Q. Didn't you have some interest in the matter, since your uncle was a bachelor, and you thought it possible to inherit a part of his estate?
A. No, sir; I did not.
Q. You did not ask him for what he had sold out, did you?
A. I did not.
Q. Did you ask him how much he was worth at the time?
A. I did not.
Q. Did you find out anything about his wealth in 1874?
A. No, sir; I did not ask him.
Q. Did he say where he was going after he had sold out?
A. He did not.
Q. Did he tell you in what year he had sold out?
A. He did not.
Q. Did he say he had sold the Buena Vista ranch?
A. Yes, sir.
Q. He mentioned that by name, did he?
A. He mentioned the ranch as near as I can remember.
Q. Did you know what property he owned in 1874?
A. No, sir; he only said he had sold all his property in Mora county.
Q. You are sure he had added in Mora county to the statement?
A. As near as I can remember.
Q. Might he not have said all his property in St. Louis?
A. That I do not know.
Q. Might he not have said all stock; all his property and cattle?
A. That includes everything real estate as near as I can remember; all of his property.
121 Q. Give his exact words now.
A. He was talking in German. I sold all my property to my son-in-law, Henry.
Q. You don't know then whether he meant personal property or real estate, do you?
A. I think all the property; the personal property and the real estate.
Q. Don't you know he meant all the property—personal property and real estate—when he made that statement?
A. Yes, sir.

Q. How do you know it?

A. It seemed that Metzger had nothing to do with the property any more.

Q. Did you see any bills of sale for the property?

A. I did not.

Q. Did you see any deeds to the property?

A. I did not.

Q. Who was present when Frank Metzger told you this?

A. I do not remember.

Q. Was anybody present?

A. I think his family—that is Henry Korte's family—was there.

Q. Frank was about the store most of the time, was he not?

A. Yes, sir; he was sitting around there.

Q. He observed what was going on pretty closely, did he not?

A. That I do not know; I do not remember.

Q. Did they have any clerks in their employ when you were there?

A. No, sir; not at that time.

Q. Frank Metzger sold goods as well as Henry Korte, did he not?

A. Once in a while he would sell, as near as I can remember.

Q. He directed what was to be done, did he not?

A. Not that I know of.

Q. Didn't he tell Henry to go down to the ranches and look after the ranches and to pay off the men?

A. Not that I know of.

Q. Will you swear he never gave directions to Henry Korte during the two months you were there in 1874?

A. Yes, I can swear to that.

Q. You swear to that positively?

A. Yes; as near as I can remember.

Q. Well, the old man was quite feeble at that time?

A. Yes, sir; he was; he seemed that way.

Q. Korte was young and active?

A. Yes, sir.

122 Q. In that conversation he made no mention of the Cevolla ranch or the Buena Vista ranch?

A. Not that I remember of.

Q. All that you recollect about positively that occurred in the year 1874 during the two months that you were with Frank Metzger and Henry Korte, is that Metzger told you that he sold all his property to Henry?

A. Yes, sir.

Q. You have considerable interest in this case?

A. I have now.

Q. Since you married Korte's daughter?

A. Yes, sir.

Q. Your wife, the daughter of Henry Korte, and the other children of Henry Korte, have since the death of Frank Metzger taken possession of all the property of Frank Metzger and have held and claimed it as their own, and still hold it, do they not?

(Objection by counsel for defendant, because it assumes that Frank Metzger had property at the time of his death.)

A. Henry Korte owned property ever since it was sold to him, and the children of Henry Korte expect to hold the property of their father.

Q. You know nothing about the sale of the property, except what Frank Metzger told you?

A. Yes, and I found the deeds.

Q. How many acres of land are there in the Buena Vista ranch, hills and all, cultivated and uncultivated?

A. About two hundred and fifty acres.

Q. What proportion of that is under ditch and can be irrigated?

A. About ninety acres.

Q. How many acres has been cultivated the last year when you say the profits were three hundred dollars?

A. About sixty acres.

Q. How many fruit trees are there on the Buena Vista ranch?

A. About one thousand bearing trees, part of them; about six or seven hundred fruit-bearing trees.

Q. What kind of fruit?

A. Apples, pears, some prunes.

Q. What did the house that was recently occupied by Henry Korte on that ranch cost?

A. I do not know.

Q. Did you live in the family during the time it was being built?

A. Part of the time.

Q. Can you state about what it cost?

123 A. I have no idea what a house of that kind would cost in this country.

Q. Do you know what the barns on that ranch are worth?

A. Very little in the shape they are in.

Q. How many acres of orchard are there on the Buena Vista ranch?

A. I think there is about four acres.

Q. What is it worth per acre?

A. I do not know.

Q. Do you know what the irrigated land is worth per acre?

A. I do not.

Q. What is the mountain land worth per acre?

A. I do not know.

Q. What is your trade, Mr. Naeglin?

A. Wagon-maker.

Q. You worked at that trade up till about what time?

A. About 1885.

Q. What did you do then?

A. Stock business.

Q. How long did that last?

A. Up to this time.

Q. How many acres are there in the Cevolla ranch?

A. That I cannot tell, for it never was surveyed that I know of.

Q. Give more or less.
A. About one hundred and fifty acres.
Q. How much under ditch?
A. About fifteen, the balance mountain and prairie land.
Q. House upon it?
A. Yes, sir; no barn.
Q. What property do you know of outside of what you have mentioned as being in the county of Mora that formerly belonged to Frank Metzger?
A. None that I know of.
R. Have you heard of any?

(Objected — on the *the* ground of hearsay.)

A. No, sir.
Q. Have you heard of none in St. Louis or about there?
A. No, sir.
Q. From any one?
A. No, sir.

Redirect examination:

Q. You state in your cross-examination, if I mistake not, that you saw no receipts in 1874 for any money which Henry Korte had paid Frank Metzger. Now state whether or not since you have become administrator of the estate of Henry Korte, you have
124 seen any receipt signed by Frank Metzger for money received from Henry Korte.

(Objected to by counsel for complainant- on the grounds that it calls for secondary evidence, and is incompetent and immaterial.)

A. Yes, sir.
Q. Were you present at Mora on or about the 12th of April when Asatacio Trujillo and Jose Gallegos testified about witnessing Frederick Metzger's name to receipts which he had given to Henry Korte in the year 1873?
A. Yes, sir.
Q. Did you ever have possession of those receipts?
A. Yes, sir.
Q. When and in what capacity did you get possession of them?
A. Looking through the papers as the administrator of the estate of Henry Korte, in January, 1889.
Q. Who had possession up to the time they were introduced in evidence on or about the 12th day of April, 1890, at Mora?
A. I had possession of them.
Q. Had they been out of your possession at any time during that period of time?
A. No, sir; not until that time.
Q. State whether or not you found said receipts among the papers and effects of said Henry Korte, deceased, upon your appointment as administrator of said estate.
A. Yes, sir.

(Counsel here moves to strike out the redirect testimony of the witness with reference to some receipts, because during the giving of said testimony no receipts or papers of any kind were shown to witness and identified by him in any way, and neither witness nor the counsel for the complainant- know to what papers reference has been made.)

Recross-examination:

Q. You have been hunting for papers with reference to this property for some time past?
A. Yes, sir.
Q. Ever since you married Henry Korte's daughter, and the commencement of this suit?

(Objected to by defendant, because the question is nonsensical and immaterial.)

A. I did not.
Q. When did you first begin to look for papers with reference to this property?
A. January, 1889.
125 Q. You never looked during the time of Henry Korte?
A. He attended to his own business.
Q. I want an answer, yes or no. Give us an answer.
A. I did.

Subscribed and sworn to before me this 19th day of April, A. D. 1890.

HENRY NAEGLIN.

WITNESS WILLIAM KROENIG.

Witness duly sworn, deposes and says he resides in the vicinity of Watrous.

Q. Did you know Henry Korte in his lifetime?
A. I did.
Q. When and where did you first become acquainted with him?
A. In 1859.
Q. Where?
A. Near Denver, Colorado,
Q. State whether you knew him in this Territory.
A. I have known him from that time until his death.
Q. State whether or not he was ever in your employ and, if so, where it began and ended.
A. I employed him in 1859, and he remained a year with me in Colorado; then came to New Mexico, and remained with me until March, A. D. 1867.
Q. In what business were you engaged during the time, and what was he doing in your employ?
A. I was farming and stock-raising, and Korte held the position as overseer.

Q. Do you remember what wages you were paying him, if any?
A. He commenced with sixteen dollars a month, and I gradually raised his wages up to one hundred and fifty dollars per month.
Q. Do you remember whether you made a settlement with him at or about the time he left your employ?
A. I made a settlement with him the first day of March, A. D. 1867. Seven thousand dollars I paid him.

(Objected to and moves to strike out the same, because it is not responsive to the question.)

Q. Were you acquainted during that time with the habits of Mr. Korte as to economy, and the saving or the expending of his money and his means?

126 (Objected to by counsel for complainant- because it is incompetent, irrelevant and immaterial, and no proper foundation has been laid for its introduction.)

A. I was.
Q. Now state what were his habits in that respect.
A. He was an extremely close-fisted man.

(Objection same as before.)

Q. What do you mean by that answer?
A. I mean by it that he did not spend a cent more than he was compelled to spend.
Q. Can you give us an illustration of that fact?

(Objected to by counsel for complainant- because no proper foundation has been laid for its introduction, and because it is incompetent and immaterial.)

A. Only by referring to my book account, which was smaller than any other man in my employ.
Q. Do you know whether he married after he left your employ or not?
A. I know because I was his godfather. I was present.
Q. When was that?
A. I suppose it was in 1867. He married the same year he left my employ.
Q. Who did he marry?
A. He married the daughter of Frank Metzger.
Q. Do you mean by that Frederick Metzger?
A. Yes, sir.
Q. Do you know whether Henry Korte and Frederick Metzger at or about the time of the marriage became copartners in business?
A. Neither of them told me so, but it was the general supposition that they were.
Q. State whether or not they had that reputation, if you know, in the community where they lived.
A. They did have that reputation.
Q. Do you know how long that copartnership existed?
A. I do not know. This was all in Mora county, New Mexico.

Cross-examination:

Q. State whether or not the seven thousand dollars you have testified about as being paid to Henry Korte in 1867 was all the property he then owned or possessed.

A. It was all he had at that time.

Q. State how that seven thousand dollars was paid by you.

A. About three thousand dollars of it was paid in stock cattle, some mules, one horse and wagons; the balance in cash.

127 Q. You have stated in your direct examination that Henry Korte married a daughter of Frank Metzger; you mean by that that Frank Metzger was the father of the girl?

A. I do.

Q. Who was the mother?

A. A woman by the name of Appolonia; I did not know her other name.

Q. Where did Appolonia live at the time of the birth of this daughter?

A. I do not know.

Q. Was she living at Mora?

A. I cannot tell you.

WILLIAM KROENIG.

Subscribed and sworn to before me this 19th day of April, 1890.

In the District Court, Fourth Judicial District, Territory of New Mexico, County of Mora.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE *et al.*

Testimony Taken before the Examiner Appointed in the Above-entitled Cause on Thursday, May 1st, A. D. 1890.

Complainants present by Messrs. Veeder and Catron, their solicitors, and defendants present by Colonel G. W. Pritchard, their solicitor.

JOHN H. MINK, being first duly sworn according to law, deposes and says, being examined by Mr. T. B. Catron:

Q. State your name, age, residence and occupation.

A. John H. Mink. My age is 73 years. I live in Anton Chico, San Miguel county; I am a farmer.

Q. Were you acquainted with Francisco Metzger and Henry Korte in their lifetime, if so state how long you have known each of them.

A. Yes, sir; I knew Metzger since 1846, and I knew Henry Korte since 1863 or 1864.

Q. Where did Francisco Metzger reside when you knew him?

A. I came out from the States with him in 1846. Metzger resided since that time most always in Mora.

Q. Were you ever at his residence in Mora?

A. Yes.

Q. State whether or not you were at his residence about the latter part of 1873, or at any time in the year 1874?

A. That was the time, I believe, when I saw him in Mora. I stopped at his house several days.

128 Q. State whether or not Henry Korte was there at the same time.

A. Yes, sir; he was there at the same time.

Q. Did you or not, on that occasion, have any conversation with Frank Metzger in the presence of Henry Korte, with reference to any indebtedness claimed by Frank Metzger due by Henry Korte to him, if so, what was said and done about it?

A. Yes; he told me that he had transferred to Henry Korte some property, and he mentioned it whatever it was, and that Henry Korte acknowledged himself indebted to him ten or twelve thousand dollars. Perhaps about a half an hour after that conversation I asked Metzger if he had anything to show for that indebtedness, and he told me he didn't think it necessary, that Henry would deal right with him, something of that kind—that he would do what was right, that he entertained no fear. I suggested to him the propriety to take a note from Henry Korte. Henry Korte agreed to that and both told me to write out a note. I wrote out a promissory note for about ten or twelve thousand dollars, I believe, I do not know if the note was with interest or not. And I believe I made it payable some months after demand. I am not quite certain about that, but I remember something of that kind. I turned the note over to Metzger. I gave the note to Metzger, after it had been signed by Henry Korte in my presence, and Metzger ordered Henry to put it away in his desk or safe or some place. Of course there was some other talk, but I don't remember it.

Q. To whom was that note made payable?

A. It was made payable to Frank Metzger or to his order, I believe.

Q. By whom was it signed if any?

A. By Henry Korte, and perhaps by me as a witness.

Q. When Metzger gave the note to Korte to put away, what did Korte do with it so far as you observed?

A. He either put it away in the safe or in a desk that was standing on the counter.

Q. Did you ever see Henry Korte after the death of Metzger and have any talk with him with reference to the estate of Metzger?

A. When I was in Mora some time after Metzger's death, Korte told me that the prefect of that county, the probate court, requested him to take out letters of administration, and that he didn't see no necessity for it, as there was nothing left to be administered. I asked him what had become of the note. He didn't give me no satisfactory answer, he told me it was settled or something like that—that it was all settled.

Q. What note was you speaking about?

A. That note for ten or twelve thousand dollars that I had made out for them some time before.

129 Q. Did he state definitely what had become of the note, or was his language uncertain?

A. No, he was rather under the influence of liquor and I did not feel like talking much about it.

Q. He was not then very positive as to what had become of the note?

A. No, he didn't show me the note and I didn't ask for it either.

JOHN H. MINK.

In the District Court for the Fourth Judicial District, Sitting within and for the County of Mora.

Testimony Taken before the Examiner on Saturday, May 3d, 1890.

Present: Messrs. Catron and Veeder, solicitors for the complainants, and Col. G. W. Pritchard, solicitor for the defendants.

Major ARTHUR MORRISON, being first duly sworn according to law, deposes and says, being examined by Mr. T. B. Catron:

Q. State your name, age, residence and occupation.

A. Arthur Morrison, sixty-nine years old. I live in Las Vegas, San Miguel county, New Mexico. I am a conveyancer.

Q. Are you the same Arthur Morrison who has previously testified in this case?

A. Yes, sir.

Q. Were you acquainted with Juanita Korte, the wife of Henry Korte, in her lifetime?

A. Yes, sir.

Q. Do you know her mother and if you do, state who was her mother?

A. Her mother was Appolonia, I don't recollect her other name but she was married to Bernardo Martin.

Q. Were you acquainted with the said Appolonia prior to the birth of the said Juanita, wife of Henry Korte, if so how long prior to her birth did you know the said Appolonia?

A. I knew her about a year or two years before the birth of Juanita.

Q. When you first knew her, state if you know whether she was a married or single woman and if married, to whom she was married?

A. She was then married to this Bernardo Martin.

Q. Do you know whether Bernardo Martin is dead or living, and if dead, when he died?

A. I knew him during his lifetime. He died about ten or twelve years ago. I am not very positive as to the date of his death.

130 Cross-examination by Mr. PRITCHARD:

Q. Frank Metzger lived with the mother of Juanita Korte, didn't he?

A. Yes, sir.

Q. How many years do you know he lived with her? About how many?

A. I think from the year 1850 to my knowledge to her death. She has been dead eight or nine years.

Q. Now when Frank Metzger was living with her, from 1850 up to the time of her death, where was Bernardo Martin?

A. In the first years, 1850 or 1851, he was in Frank Metzger's house as a "peon." A few years later than that he lived at the ranch of Frank Metzger at Cebolla, with his daughter, Viviana, there I saw him and there he died.

Q. When did he die?

A. I think about ten or eleven years ago.

Q. Did he remain on that ranch until he died after he left the store of Frank Metzger?

A. To the best of my knowledge he did.

Q. Did this woman whom you represent as his wife, live on the ranch with him?

A. No, sir.

Q. How many years did he live on that ranch?

A. I can't say how many years successively he lived there.

Q. State how many years he lived there more or less.

A. Ten or fifteen years that I know of.

(Col. PRITCHARD: I now desire to make Mr. Morrison my witness.)

Q. You know Viviana Martin?

A. Yes, sir, the daughter of Appolonia.

Q. The same woman that is the mother of some of these complainants was she not?

A. Yes, sir.

Q. Do you know whether she was the member of any church?

A. I do not.

Q. Do you know what religion she professed?

A. To the best of my knowledge she was a Catholic.

Q. You knew Frank Metzger very well, didn't you?

A. Yes, sir.

Q. Do you know whether he was a member of any church—do you know whether or not, he was a member of the Catholic church?

A. No, sir, he was not.

Q. What religion, if any, did he profess, the Protestant religion or Catholic?

A. From my knowledge of him I believe he was a Protestant.

131 (Mr. CATRON: The foregoing questions and answers with reference to the religious profession of Viviana Martin and Frank Metzger are objected to as being irrelevant and immaterial.)

Col. PRITCHARD: Were you ever present during any marriage ceremony of Bernardo Martin?

A. No, sir.

ARTHUR MORRISON.

Testimony Taken before the Examiner Tuesday, May 6th, 1890.

JUAN JOSE GALLEGOS, being first duly sworn according to law, deposes and says, being examined by Mr. T. B. Catron:

Q. Are you the same Juan Jose Gallegos who testified in this case on a former day?

A. Yes, sir.

Q. You stated in your former testimony that you were present when certain documents and receipts were turned over by Metzger to Henry Korte, and when certain money was brought into the room by Korte and examined by Metzger, and Korte was directed to take the same back and put it away. State if Metzger said anything else to Korte at that time besides what you have testified to.

A. I was sleeping in my house and Francisco sent some persons for me. When I came into the store of Francisco he told me to sit down. He told me to wait a little while until Anastacio Trujillo could come. He afterwards took us into another room that was there. In this room there was a round table. We all sat down around the table. Francisco then said to us that he had called us to do him the favor to sign some papers. I asked him what kind of papers they were. He said to me that he had sold to Henry his real estate. Then when we finished signing the papers Metzger took them in his hand and said, Here are your papers. He then said to him, There are your papers; I want my money. Henry brought out from a room the money and they were counting it. When they finished counting it, Metzger said to Korte, "You yet still owe me," and Henry answered, "Yes." Then Francisco said to Henry, Take this money and put it away again. Henry took it and took it back into the same room from which he had brought it. That is what took place there.

Q. State whether or not you know Frank Metzger well?

A. Yes, sir.

Q. Were you acquainted with his habits and customs as to spending money, or as to being an economical man or spendthrift? If so, state what they were.

(Objection made to question by defendant's attorney.)

132 A. Francisco Metzger was a man who was very stingy, or as you would say, very economical. I never saw him spend anything in things outside of necessaries.

Q. How frequently did you see Metzger or were you with Metzger after you signed those papers?

A. I was with him constantly. There was never a single day passed that I was not with him in his house.

Cross-examination by Mr. PRITCHARD:

Q. Did Frank Metzger claim or pretend to claim any interest in the store there if there was a store, at that time there, after you signed those papers?

A. I do not know.

JUAN JOSE GALLEGOS.

In the District Court for the Fourth Judicial District, Sitting within and for the County of Mora. In Chancery.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE. } Chancery. No. —.

It is hereby stipulated and agreed by and between complainants and defendants that the annexed copy of an inventory is the inventory made by Henry Korte, with the appraisement thereof, as made by the appraisers appointed by the probate court in the matter of the administration of the estate of Frank Metzger by Henry Korte, administrator thereof, and that no other inventory of said estate has ever been made by the said Henry Korte, and that the property mentioned in said inventory is all of the property which the said Henry Korte has ever reported as having come into his hands, belonging to said estate of said Frank Metzger, and that said copy may be introduced in said cause without further proof, the same as if it was the original.

T. B. CARTON,
JOHN D. W. VEEDER,
Solicitors for Complainants.
GEORGE W. PRITCHARD,
Solicitor for Defendants.

MORA, N. M., *Feb.* 26, *A. D.* 1885.

Inventorio que contiene los vienes raises y personales del finado Frederick Metzger, que comienza a formar hoy 26 de Feb., A. D. 1885.

133 Hasaber.

1 par zapatos vejitos	$1 00
1 vestido muy viejo	2 00
4 " " "	8 00
1 par pantalones	1 00
1 sobre todo	5 00
1 petaquia	15 00
4 pares calzancillos viejos	2 00
2 doz. camizas blancas	2 00
1 camiza de lana	1 00
2 relo de oro	125 00
Dinero	8 00
	$170 00

Nosotros los avajo firmados Avalnadores del estado del finado Frederick Metzger certificamos que la arriba lista es todo la propiedad a nosotros producida por el administrador y nosotros lo abaluamos segun el rator de cada articulo deser asi lo firmamos hoy dia 26 de Feb., A. D. 1885.

JUAN JOSE GALLEGOS.
A. L. BRANCH.

Yo, el abajo firmado administrador del estado del finado Frederick Metzger, certifico, que los articulos mencionados en lo arriba escrita avalacion, ancido producidos a las avalnadores por mi hoy el dia 26 de Feb., A. D. 1885.

HENRY KORTE,
Administrador del Estado del Finado, Frederick Metzger.

I, the undersigned, clerk of the probate court and *ex officio* recorder of the county of Mora, do hereby certify that the *f*bregoing one page and nine lines, contain a true copy of the inventory and appraisement thereof, returned by Henry Korte, as administrator of the estate of Frank Metzger, deceased, as the same appears of record in my office.

AGAPITO ABEYTIA,
Probate Clerk and ex Officio County Recorder.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE.
} In Chancery.

Testimony Taken before R. M. Johnson, Master, Thursday, April 5th, 1888, at His Office, in Mora, Mora County, Territory of New Mexico.

Present: T. B. Catron, Esq., and J. D. W. Veeder, Esq., attorneys for plaintiffs, and G. W. Pritchard, Esq., attorney for defendant.

134 RAFAEL ROMERO, being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows, being examined by J. D. W. Veeder, Esq., attorney for complainants:

Q. What is your name, age, place of residence and occupation?

A. My name is Rafael Romero. I am thirty years old. I reside at La Cueva. I am a farmer and stock-raiser by occupation.

Q. Are you acquainted with the plaintiffs in the above-entitled cause?

A. I am.

Q. Do you know what property the defendant, Henry Korte, had in his hands at any time, or ever, belonging to Frank Metzger?

A. I do.

Q. State in detail each piece of property, as far as you know, that Henry Korte had in his hands at the time of the death of Frank Metzger that Frank Metzger ever possessed or owned?

A. He had the Pinard ranch.

Q. Where is that situated?

A. At Buena Vista.

Q. What, if you know, is the size or dimension of that ranch?

A. The area is about three thousand acres.

Q. Which is the Pinard ranch, give some description so as to designate it from any other ranch?

A. It is the ranch where there is a lake and where Mr. Korte has been living in the last two years.

Q. What improvements are on the ranch?

A. There is a valuable residence, a great many outhouses, one large lake filled with water, three and a half or four miles of ditching, and some three hundred acres of land under cultivation, and some meadow land.

Q. Any fencing?

A. At one time the whole tract was fenced.

Q. What about the fencing, orchard and trees?

A. There is an orchard of a thousand trees, a thousand bearing fruit trees. He first set out five hundred trees near the house on the west, and then five hundred more; they are younger trees, but are bearing now.

Q. What county is that situated in?

A. In Mora county.

Q. I don't know whether you said anything about the present condition of the fences or not; what is their condition?

A. At present the fences are more or less destroyed. They were rail fences. The whole tract was fenced once, and also pastures or lots cut inside of the original area, but logs don't last long in this country, and they are rotten and some of them have been used for firewood.

135

Q. Are you acquainted with the value of property in the portion of the county where this property is situated, that ranch?

A. I am.

Q. How far do you reside from it?

A. Three miles.

Q. Do you know the property well?

A. I do, sir.

Q. State, if you know and can state, what is the fair market value of that property—what was the fair market value of it at the time of the death of Frank Metzger, and what is its fair value now in money.

A. It is certainly worth thirty thousand dollars now and it was worth that at the time of the death of Metzger.

Q. What, if you know, would be the annual income from that property?

A. I don't know the annual income.

Q. Can't you give your judgment about it?

A. The income could be five thousand dollars, properly managed.

Q. Worked and tended to as it was worked and tended to before the death of Frank Metzger, it would be worth five thousand dollars?

A. Yes, sir.

Q. How long has that property been so it would produce an annual income of five thousand dollars, properly cared for, how many years back?

A. For twenty years.

Q. What other piece of property had Henry Korte possession of that formerly was in the name of Frank Metzger at the time of his death?

A. He had the Cebolla ranch.

Q. State where that was situated.

A. In this county, on the road to Las Vegas, and adjoining to Pinard property to the west.

Q. How large a ranch was that, if you know?

A. That is about twelve hundred acres.

Q. What character of land?

A. Some farming, mostly grazing land, some timber land.

Q. Has it any other name besides "Cebolla" ranch, if so, what?

A. I don't remember any other only the "Metzger ranch."

Q. How much of that ranch is cultivated land?

A. About sixty acres.

Q. State what character of improvements it has on it.

A. It has one large house containing several rooms, possibly ten or twelve.

136 Q. How is that house covered?

A. At one time it had a board roof on, now it is partly roofed with boards and partly flat roof.

Q. What other house or improvements has it besides that?

A. It has no other except a distillery years ago. There are some few log houses back of this adobe building used for stables.

Q. Are you acquainted with the value of property around about where that ranch is such as that?

A. Yes, sir.

Q. State what in your opinion is the value or was the value of that property at the time of the death of Metzger and what is its value now?

A. It was worth then I think twenty-five hundred dollars and is worth that today.

Q. What in your judgment would be the annual income of that property, taking into consideration the amount of land that is cultivated, and other use of the land properly made?

A. Three hundred dollars.

Q. When you answer about the annual income do you mean the net income?

A. Yes, sir.

Q. What other piece of real estate, if any, do you know of that was held in the name of Henry Korte at the time of the death of Frank Metzger and that belonged to Frank Metzger at the time of his death?

A. There was a house and lot in the town of Mora.

Q. Give a description of it?

A. It is a large adobe building fronting on the main street in Mora. It is on two streets, it is on the corner, with a court yard in the center and large corral back of it, all of adobe; a porch around it on the side of the streets, flat roofed, flag pavement on the porches.

Q. By what name or designation was that house and lot known, if any?

A. That was always known as "the house of Don Francisco."

Q. Frank Metzger?

A. Yes, sir.

Q. What was it used and occupied for?

A. It was used for a store as well as dwelling-house, and warehouse, stables and corrals.

Q. State whether or not it is the same property that is immediately in front of Walton's hotel?

A. It is.

Q. If Frank Metzger ever used it during his lifetime for any purpose, for what was it?

137 A. He used it as a store, as his dwelling-house, and as a warehouse.

Q. Was that the place he died or did he die somewhere else?

A. That is where he died.

Q. Are you acquainted with the value of the property such as that in the town of Mora?

A. I am, sir.

Q. What was the value of that property if you know, at the time of the death of Frank Metzger, and what is its value at the present time?

A. It was worth five thousand dollars then and I think it is worth five thousand dollars today.

Q. What in your opinion, would be the annual net income from that if properly cared for, rented or used?

A. It would be worth five hundred dollars.

Q. Would that be the fair rental value of it?

A. I think so.

Q. What other property do you know of held in the name of Henry Korte at the time of the death of Frank Metzger which formerly belonged to Frank Metzger?

A. There is the Leonore Beaubien property situated in the town of Mora.

Q. State where it is situated?

A. It is on the road to Upper Mora, lies west of the court-house on the north side of the main street. It lies northwest of the Presbyterian Mission school.

Q. What is the size of it, how large more or less?

A. It is about one hundred feet front by two hundred feet deep.

Q. How much house?

A. All house in front and it has a court yard inside and house all around it.

Q. What has that property been used for for the last several years?

A. I don't know. I don't think it has been used for anything by Metzger, except as a house for his tenants, those who farmed his land in the valley of Mora.

Q. Do you know how many rooms there are in it more or less?

A. There are from ten to twelve rooms.

Q. Are you acquainted with the value of property in the vicinity of this property?

A. I am.

Q. Such as this?

A. Yes, sir.

Q. If you are, state what in your opinion was the fair market

value of that property at the time of the death of Metzger; also what its value is now.

138 A. I think it was worth two thousand dollars then and I think it is worth that now.

Q. If you know, state what in your opinion would be the fair rental value of that property per annum.

A. I judge two hundred dollars.

Q. If you know of any other real property held by Henry Korte at the time of the death of Frank Metzger, which formerly belonged to Metzger, state it.

A. There was the William Bransford property situated on the outskirts of the town of Mora, on the north side of the river.

Q. Situated close to what place?

A. It was adjoining to the St. Vrain estate to the west.

Q. How much property is there of that, and what character of property is it?

A. It is all rich farming land.

Q. About what size, if you know?

A. About thirty-five acres of rich farming land.

Q. State whether or not it is under an acequia.

A. The thirty-five acres are all under ditch, and possibly twenty acres more are not. It runs from the Mora river to the south up to the mountain on the north.

Q. If you know the value of property in that vicinity, state what was the fair market value of that property at the time of the death of Frank Metzger and now.

A. I do; it was worth fifteen hundred dollars then, and I think it is worth that now.

Q. State what, if you know, was the fair annual income or rental value of that property per annum.

A. Two hundred and fifty dollars.

Q. Do you know of any other real property held by Korte at the time of the death of Metzger, which Metzger formerly owned?

A. I know he had some land in Agua Negra in this county.

Q. Do you know how much it was?

A. One hundred varas of land.

Q. What character of property was it?

A. Farming land, grazing land and some timber land.

Q. What was it used for, farming and grazing?

A. Yes, sir.

Q. How much of it?

A. About fifteen acres were used for farming, and possibly twelve or thirteen for grazing and timber.

Q. Can you give any other description of it so it can be identified?

A. It runs from the Agua Negra river on the north to the Estillero mountains on the south, and is situated near the Homan placeta or Agua Negra. I don't know what lands bound it on the east or west.

139 Q. State whether or not you are acquainted with the value of properties of that character in that section of the country.

A. I am.

Q. If you know, state what in your judgment would be the fair market value of that property at the time of the death of Frank Metzger, and also at the present time.

A. It was worth five hundred dollars then, and is worth that now.

Q. Were there any improvements on it?

A. None that I know of.

Q. Was there any improvements on the Bransford property?

A. Yes, there was a large adobe dwelling-house at the southern end of that tract of land, and near the Mora river.

Q. Now, do you know of any other piece of property or real estate or ranch property held by Korte at the time of the death of Frank Metzger, which formerly belonged to Metzger?

A. I don't remember.

Q. Prior to the death of Frank Metzger, state, if you know, how the business of these various pieces of property, this real estate which you have mentioned, was conducted and carried on.

A. They were managed jointly by Henry Korte as well as by Frank Metzger.

Q. All of them or any particular ones?

A. All of them.

Q. State what your relations were with Korte and Metzger prior to the death of Frank Metzger, for say, ten or fifteen years.

A. Very friendly; quite intimate.

Q. State whether or not you frequently visited the place where they were, and had conversations with them.

A. Very frequently.

Q. Did you ever talk to them or hear them talk about their business affairs at different times?

A. Yes, in a general way.

Q. How was this property that you have mentioned treated between themselves as to ownership?

(Colonel PRITCHARD: I object to that question. Let the witness state what he saw and heard.)

A. I always heard them speak about "our property," "our ranch," "our houses," "our land."

Q. When talking about these various pieces of property?

A. Yes, sir.

Q. State whether they would speak of it that way when they were together or separate, or how.

A. Both together.

Q. In the management and control of these various pieces of property, state who exercised the control and management
140 over the same prior to the death of Metzger for, say, ten or fifteen years.

A. Henry Korte mostly.

Q. What, if anything, did Metzger have to do with them?

A. Metzger was living at Mora most of the time, and he tended mostly to the stores and the paying off of the men, and once in a while, sometimes once a month, or once in two or three months, he would go around and see what was going on, but in any transaction

that was had concerning any piece of land or anything between Korte and ourselves, myself or my father, we never could fix it definitely until he came to see his father-in-law, always stating, "I will see what my father says." That was Mr. Frank Metzger.

Q. Korte would say that?

A. Yes, sir; or Metzger would say the same thing: "I will see what Henry says about this."

Q. State how they treated each other with with reference to being interested or part owners in the property or joint owners in talking about the property or in managing the property.

(Objected to by counsel for defendant.)

A. Well, as I said before, they would always speak about "our property," "our ranch," "our land."

Q. I want to know in dealing or trading about the land how they treated each other, as if jointly interested as owners or not.

A. Yes, sir; so I understood.

Q. State whether or not you frequently heard them speak about the property or business of the property.

A. Very frequently.

Q. State whether Metzger continuously for the last ten or fifteen years, up to the time of his death, exercised direction or control over the property.

(Objected to by counsel for defendant on the grounds that it calls for the conclusion of the witness.)

A. He had general control.

Q. How?

A. General control, either by objecting to something that was done or directing it should be done in a certain way.

Q. State, if you know, whose direction or word as between the two, seemed to carry the greatest weight or most controlling weight when there might be a difference or misunderstanding.

(Objected to by defendant's counsel on the ground that it calls for the conclusion of the witness.)

A. Oh, Metzger's by far.

Q. His word governed and controlled when there was any doubt, did it?

A. Yes, sir.

141 Q. At the time of the death of Francisco Metzger, state whether there was any property in that store, that you say Metzger generally attended to?

A. Yes, sir; there was a stock of general merchandise.

Q. Who generally attended to that business?

A. Metzger himself.

Q. Who generally paid off, employed and discharged hands and employés, if you know?

A. Henry Korte.

Q. Who paid them?

A. He would pay them himself, Korte would, generally at the store.

Q. Did Metzger ever do any of that also?

A. Oh, yes, but whenever the men came for payments and Metzger was alone in the store, he would always detain them until Henry would come, stating always "Henry had the accounts and he didn't know how they stood." When the accounts were arranged, Metzger would as readily pay them as Korte.

Q. How would the men be paid?

A. Generally in goods.

Q. Out of the store?

A. Yes, sir.

Q. At the time of the death of Frank Metzger, have you any knowledge or judgment as to the amount of goods that were in that store?

A. I can guess. I have no knowledge.

Q. State whether it was a considerable amount or a small amount?

A. It was not a large amount nor a small amount. It was a medium-sized stock of general merchandise.

Q. Have you ever engaged in the business of merchandising yourself?

A. Yes, sir; I have been for a number of years and was at that time.

Q. Are you able to estimate the value of a stock of goods in a store, when you see it that way?

A. Yes, sir.

Q. What would be the value of that stock of goods, to the best of your judgment and opinion, at the time of the death of Metzger, if you saw it about that time?

A. $4,000 would be a very fair estimate, I think.

Q. Do you know under what name all this business of these ranches and stock of goods was carried, at the time of the death of Metzger?

A. Under the name of Henry Korte.

Q. State whether or not that was a partnership name, so far as you knew and was able to observe?

142 (Objected to by defendant's counsel.)

A. I always considered it so, for hearing the two men speak; they always spoke about "our ranch," "our business," and that business was carried on under that name.

Q. What other property do you know that was in the name of Henry Korte at the time of the death of Francisco Metzger that was managed under the same management and control?

A. At the time of his death I only know that at the Pinard ranch they had one hundred and fifty cows, about fifty head of horses and mules, and about one thousand goats, and there were the farming implements necessary to farm the Pinard and Cebolla ranches—threshers, corn-shellers, fanning mills, plows, harness, wagons, and some work cattle.

Q. Are you acquainted with the value of that class of animals and machinery and implements at that time and in that place?

A. I am.

Q. About what was the value of these hundred and fifty cows per head at the time of the death of Frank Metzger?

A. They were worth $25.00 per head then.

Q. About what was the value of these horses at the time of the death of Frank Metzger?

A. Different prices. They had some draft horses and mules for farming purposes, they had some breeding mares, and cow ponies; the prices would vary very materially. On an average they certainly would be worth $100 per head.

Q. What was the value of the goats?

A. The goats were sold for seventy-five cents apiece, I know.

Q. What was the value of these farming implements and everything that was connected with that ranch, or any of the ranches that you knew of, at the time of the death of Metzger?

A. There was not less than two thousand dollars' worth.

Q. Now, do you know of any other property at any other place besides at that ranch?

A. Personal property at the time of Metzger's death I do not know; I know prior to that.

Q. What time prior?

A. In the year 1881.

Q. At what place?

A. At Ute creek, the eastern end of Mora county.

Q. What do you know of property at that place? What kind of property?

A. In the year 1881 I was running some cattle, stock cattle, at the Tequesquite, a stream adjoining Ute creek, and was a near neighbor of the Henry Korte ranch, and Korte's men as well as mine always computed the Korte stock of cattle at about two thousand head, more or less.

143 Q. Do you know to whom these cattle belonged, how they were handled, managed and controlled with reference to the other business?

A. They were managed and controlled and handled generally with the other business of Henry Korte and Frank Metzger.

Q. Under the name of Henry Korte?

A. Yes, sir; the brand was an "H. K."

Q. Do you know what become of those Korte cattle?

A. From information—information from Korte himself.

Q. What was said?

A. That he sold them.

Q. Did you ever hear Metzger say anything about them?

A. Metzger once or twice spoke with me in the town of Mora, and said, "Henry has gone out to deliver some cattle we have sold."

Q. Did he state what cattle it was?

A. Cattle running on the Ute Creek ranch.

Q. Did he say anything about whose cattle they were, or how did he designate them?

A. He would say, "We have sold our cattle. These Texans or men on the north of us are running so many cattle and they drifted down in the winter time to our ranch so we can't hold ours, so we have made up our minds to sell the cattle."

Q. How would Korte speak of them?

A. He always spoke of "our cattle," "our ranch."

Q. Do you know about when it was the cattle were sold?

A. They were sold after the year 1881. I could not state the time.

Q. Were you acquainted with that herd of cattle?

A. I was.

Q. About the time these cattle were sold—do you know about that time; do you remember the occasion or about the time when they were sold?

A. Yes, sir.

Q. About that time, state if you know what was the value of those cattle per head at that place.

A. They were sold about the time cattle commanded the highest price and cows were worth $30 per head.

Q. Take the herd around.

A. That would be the fair average, throwing in the calves.

Q. When you speak about two thousand head do you mean throwing in the calves?

A. Yes; we never count the calves.

Q. Was that at that time about the fair market value of such cattle as those?

A. It was.

144 Q. State whether or not you know of your own knowledge or have heard from either Metzger or Korte anything about any money that they had on hand prior to the death of Metzger?

A. I never did.

Q. Do you know Viviana Martin?

A. I do.

Q. State if you know what her relations were if anything to Frank Metzger?

A. I don't know about her relations to Metzger. I know she lived for a great many years at this Cebolla ranch of Frank Metzger's.

Q. Do you know whether or not he lived there part of the time or any portion of the time during that time or how he lived there if at all?

A. I frequently saw him there on my way to Las Vegas, or on my return. Sometimes I met him on the way and would ask him where he was going and he would say, "To Cebolla."

Q. Do you know the three plaintiffs in this case?

A. I do.

Q. Do you know who was their mother?

A. Viviana Martin.

Q. Do you know whether Viviana Martin is a single or a married woman?

A. She is a single woman so far as I know.

Q. Do you know who was their father, if so state how you know it; or any means that you have of knowing it—I mean of these three complainants?

A. They informed me—the plaintiffs themselves—that Frank Metzger was their father.

Q. Did you ever have any conversation with Metzger or hear him say anything about his being related to these children?

A. Never.

Q. Do you know where they were born?

A. Not of my own knowledge.

Q. How young did you know them, at what age were they when you first knew them?

A. The oldest was probably ten years old and the youngest almost a baby.

Q. Where were they living when you first knew them?

A. At this Cebolla ranch that I have spoken of before.

Q. Where you say you frequently saw Metzger?

A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

Q. How long has this Pinard ranch been established?

A. As far as I can remember, twenty-eight years.

Q. What was the extent of the ranch when it was established?

145 A. It was just as large then as now.

Q. What has been the products of the ranch?

A. You mean the different kinds of grain?

Q. The products of the ranch—what do they consist of?

A. Wheat, corn, oats, fruits, hay, and vegetables.

Q. How long has that orchard been there?

A. The orchard has been there twenty-one years.

Q. One thousand trees there twenty-one years?

A. No, sir; five hundred trees were set out first twenty-one or twenty-two years ago, and five hundred more about fifteen years ago.

Q. You think that ranch was worth five thousand dollars a year, twenty years ago, do you, the net profits?

A. I do, sir.

Q. You think it was worth as much with five hundred fruit trees as it is with a thousand, do you?

A. No, sir, I do not, but the grain at that time was worth a great deal more than it is now, and I calculated that the difference of the fruit of five hundred bearing trees would more than compensate the difference of the price of grain then and now.

Q. Is it not true that there is more land under cultivation on that ranch the last ten years than there was twenty years ago?

A. Yes, sir.

Q. What was corn worth twenty years ago?

A. Twenty years ago corn was worth four and five cents per pound. Wheat five and six dollars per fenega; hay thirty dollars per ton.

Q. Do you know of your own knowledge that twenty years ago there was any crops raised and sold from that ranch?

A. Yes, sir.

Q. Who sold them?

A. Mr. Metzger.

Q. You kept posted for the last twenty years what they were doing on the ranch and the profits they were making on the ranch?

A. No, sir; I did not.

Q. Don't you mean to say that in your judgment the ranch ought to be made to produce the sum that you mention rather than to say it has produced that sum?

A. I say it could produce that.

Q. But you don't say it has averaged five thousand dollars per year for twenty years as a fact?

A. No, sir.

Q. You don't mean to say what sum it has averaged?

A. I do not.

Q. You are speaking of what you consider the capabilities of the ranch?

A. Yes, sir.

146 Q. Nor do you know what the profits of the Cevolla ranch have been?

A. I do not.

Q. You don't know whether it has been anything for many years before the death of Metzger, do you—the net profits?

A. No, sir; I do not.

Q. And don't that answer apply to these other ranches above here?

A. It does.

Q. You don't mean to say that they were cultivated every year, and that there were net profits arising from the lands every since Metzger obtained them?

A. I know that they have been cultivated every year for the past twenty years, for I have seen crops growing on the various lands, but I don't know at what profits.

Q. What interest have you got in this suit?

A. You mean financial interest?

Q. Yes, sir.

A. I have a contingent interest in the result of this suit.

Q. What interest is that? What are you going to get out of the suit?

(Objected to by counsel for complainant-.)

A. I don't know.

Q. You are to get a certain interest in this thing if the complainants are successful?

A. Yes, sir.

Q. You had something to do with the institution of this suit, did you not?

A. I did.

Q. You saw the complainants soon after the death of Metzger, did you not?
A. Yes, they came to me and saw me.
Q. You have your arrangements with them?
A. Yes, sir.
Q. Is that in writing or is it verbal?
A. It is in writing.
Q. The writing is not on record, is it?
A. No, sir.
Q. Who holds that writing?
A. I do.
Q. Whose name is mentioned in the writing besides yours?
A. Besides the complainants?
Q. Yes, sir.
A. Mr. Veeder's, Mr. Nolan's and mine.
Q. You are not to get anything out of this unless your are successful, are you?
A. No, sir.
147 Q. Do you know of your own knowledge whether Frank Metzger had any personal interest, actual interest, in any of this property that you have referred to?
A. Only by inference—not that I know of my own knowledge.
Q. Do you know anything about Frank Metzger having to lay out large sums of money which was paid to parties other than Henry Korte?
A. For what purpose?
Q. Any purpose.
A. I do not.
Q. You don't know about his losing large sums of money, do you?
A. I do not.
Q. Do you know anything about his paying off some relative's claims that came to this country large sums of money?
A. I never heard of it, sir.
Q. Do you know what became of the money or any part of the money that was realized from the sale of these cattle you mentioned awhile ago?
A. No, sir; I do not, only by information; that is information in conversation with Metzger.
Q. Do you know anything about Metzger making deeds for these interests you speak of to Henry Korte?
A. No personal knowledge; I have a record knowledge.
Q. Do you know anything about the consideration that was passed between them?
A. Only that record knowledge; I have no personal knowledge.
Q. You know nothing about the nature of these transactions?
A. No, sir.
Q. What they were for; what the consideration was or nothing about it?
A. No, sir.
Q. "H. K." are the initials of Henry Korte, are they not?

A. Yes, sir.

Q. And that is the brand these cattle had you speak of?

A. Yes, sir; that was one brand; they had other brands, but that was the brand they started branding cattle in 1876 when I first saw the herd, and kept it up.

Q. They kept it up from 1876 down to the time they were sold?

A. Yes, sir.

Q. You say you heard both Korte and Metzger speak of "our ranch," "our cattle," "our lands," and "our things generally"?

A. Yes, sir.

148 Q. Was that all the evidence you had they owned these things jointly?

A. That is all.

Q. Now is it not a common occurrence when men who are tending to some business, whether they are interested in it or not directly, is it not a common occurrence for them to say "our business," "our store," and things of that kind?

(Objected to by Mr. Catron of complainants' counsel as immaterial, impertinent and irrelevant.)

A. Yes, sir; it is sometimes used.

Q. Is it not a very common thing for even a salesman in a store, who has no interest in the world except the salary he is getting, to speak of "our store," "our goods," "our business?"

(Objected to by counsel for complainant as immaterial, impertinent and irrelevant.)

A. I have heard it used.

Q. How do you know that when Frank Metzger made use of the same remark that he was at that time working on a salary for Henry Korte, and had no interest in the concern?

A. I do not.

Q. So you don't know anything about that?

A. No, sir.

Q. You don't know who is the father of these complainants?

A. Of my own knowledge, no, sir.

Q. You never heard Frank Metzger say he was the father of them?

A. I never heard him.

Q. You have seen Frank Metzger a great many times on the ranch?

A. Frequently.

Q. And met him on the road between here and the ranch?

A. Often.

Q. Did you ever know of his admitting or stating to anybody that these children were his children?

A. Not in my presence.

Redirect examination by Mr. VEEDER:

Q. You say you only know that Metzger and Korte were partners by inference; what do you mean by that?

(Objected to by defendant's counsel on the ground that it is an assumption.)

A. I frequently had dealings with them—sometimes with Metzger; sometimes with Korte—and I never could close the business until both were present, and as they would use the term "our," or "wait until Henry comes," or "wait until I see my father," I inferred that they were jointly interested.

149 Q. State whether or not you also inferred the same from the fact that they both exercised control and management over the business.

A. I did.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE. } In Chancery.

Testimony Taken before R. M. Johnson, Master, Friday, April 6th, 1888, *at His Office in Mora, Mora County, Territory of New Mexico.*

Present: T. B. Catron, Esq., and J. D. W. Veeder, Esq., attorneys for complainants, and G. W. Pritchard, Esq., attorney for defendant.

Don FERNANDO NOLAN, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, being examined by T. B. Catron, Esq., attorney for complainants:

Q. What is your age, residence and occupation?

A. My name is Fernando Nolan; my age is fifty-three years. I live at Wagon Mound. I am practicing law.

Q. How long have you resided in Mora county?

A. I have resided in Mora county since 1853 with a little exception. I lived a little while in San Miguel county.

Q. Are you acquainted with Henry Korte?

A. Yes, sir.

Q. Were you acquainted with Frank Metzger in his lifetime?

A. Yes, sir.

Q. Do you know about when Frank Metzger died?

A. I don't know exactly the date. It is two years ago or three, somewhere about that.

Q. Are you acquainted with the plaintiffs in this case?

A. Yes, I know them.

Q. Do you know Viviana Martin?

A. Yes, I know her.

Q. Was she the mother of these three girls?

A. Yes, sir.

Q. Did you ever know of Frank Metzger and Henry Korte having any business relations together during the lifetime of Metzger?

A. Yes, sir.

Q. How long have you known them to be in business together?

A. I don't know exactly the year, but since Henry Korte married Frank Metzger's daughter.

150 Q. Up to the death of Metzger?

A. Yes, sir. That was my belief all the time. I would say how I came to believe it if you ask me.

Q. Go on and state what you know about their being in business together.

A. After Henry Korte married Juanita Metzger the old man himself told me he had taken his son-in-law in partnership with him, and since that time the old man never told me that he had dissolved partnership.

Q. What do you know about their doing business together after 1873?

A. Yes, Henry and the old man were following the same business together, but the old man told me somewhere after 1870, that he had put Henry at the head of the business, that he was too old to handle it himself.

Q. What was the business they were carrying on?

A. Well, they had a store here, and they had some farming land, some ranches, and they had a stock ranch.

Q. Did you ever have any conversation with Henry Korte about the business and about how it was being managed after 1873?

A. Henry Korte used to stop at my house going out to the ranch, and he used to tell me that he had to go because the old man had to stay here and take care of the business, that he was going to see their ranch and cattle.

Q. Did he say anything about why the old man would not go?

A. He was too old and sickly he said.

Q. About when was that?

A. Well, that he told me several different times.

Q. Did he ever tell you that after the year 1873?

A. Yes, sir; the last time he told me that was when he sold some cattle. I don't know the time—the day of the month or the year, but it was after that date or about that date.

Q. What date? After he sold the cattle do you mean?

A. Yes, sir.

Q. Can you state anywhere near the time it was? Was it after 1880 or before 1880?

A. It was before 1880 I guess.

Q. Was it after 1873?

A. Yes, it was somewhere in 1875, 1874 or 1875.

Q. What did he say about the old man in connection with the matter—that is, by the "old man" I mean Frank Metzger?

A. Henry told me that he was the manager of the business that the old man could not work any more, that he had to stay at home.

Q. In talking about the business how did they talk about it? What did they say as to whose business it was—how did they speak of it?

151 A. He spoke in the plural, including the old man.

Q. When you speak of the "old man" who do you mean?

A. Frank Metzger, I call him the "old man."

Q. He spoke of the plural, how?

A. He used to say "our business," "our ranch," "our medias." (Our halves.)

Q. Did he frequently speak to you about his business, about that business of the ranch and store?

A. Yes, sir.

Q. Did he ever speak of it as his own business individually?

(Objected to by defendant's counsel as leading.)

A. No, sir.

Q. You say he always spoke of it in the plural, as our business?

(Objected to by defendant's counsel as leading.)

A. Yes, sir.

Q. That was after 1873 you say?

(Objected to by defendant's counsel as leading.)

A. Yes, sir.

Q. Did you ever have any conversation with Metzger after the year 1873 about the business and the way it was carried on?

(Objected to by defendant's counsel as leading.)

A. Sometimes the old man would speak to me about his business. On one occasion he told me that he was getting uneasy on account of Henry Korte drinking so much and not tending to business like he wanted him to tend to business. More than one time he told me that.

Q. Who tended to the business here at Mora?

A. Well, old man Metzger.

Q. What did he do in the business there?

A. He was keeping store.

Q. Were you ever in there when he and Korte were talking together or when any directions were ever given about the business?

(Objected to by defendant's counsel as leading.)

A. Why, yes.

Q. State who gave the directions and who seemed to manage and control the business?

(Objected to by defendant's counsel as leading.)

A. Old man Metzger was the director of the whole business. I will say how I come to know that. Several times the old man—I used to call on the old man to borrow a little money—sometimes I would call on Henry, and here lately, a little while before he died, not a year hardly, I was pressed for a little money and I went to Henry. He used to loan me money and this time it was a little more than what I usually got. I had just paid Henry a little
152 money I had borrowed of him some months before that, and I wanted to get some money, it was considerable. I asked him for it and he says, "I am very willing, but I wish you would ask the old man. I don't want to lend it, I want his consent," he says. "Speak to the old man." Those were his words. I went behind to the desk and spoke to the old man.

Q. You mean Frank Metzger?

A. Yes, I told him I wanted to get a little money, that I had spoken to Henry and he was very willing, but he wants your consent. "All right," he says, and I got the money and I paid that money to the old man.

Q. Did you ever see or hear Metzger give any directions with reference to the management of the ranches and cattle?

A. Yes, sir.

Q. Now state what he did about directing and controlling the ranches and cattle after 1873, if you know.

A. He used to hire the mederios.

Q. What do you mean by that?

A. The employés.

Q. What else did he do besides employing the mederios?

A. He used to employ his planters and farmers for the ranches at La Cebolla. I don't know where he had all his men. I know he had a ranch at La Cebolla and Buena Vista.

Q. Do you know whether or not Metzger ever had any personal supervision over those ranches at Cebolla and Buena Vista or not?

A. I always thought he had. I always understood he had.

Q. How did you understand it?

A. By conversation with his planters and up to his death the ranch at La Cebolla was called "Don Francisco's ranch," and also at Buena Vista, we used to call it Alleman ranch, (the German).

Q. State whether or not you ever heard him give directions or say anything about controlling or managing it.

A. I am not positive that I have seen him give instructions to certain individuals but in a general way.

Q. Did you ever hear him give any directions about the management and control of the property at Buena Vista and Cebolla or either of them?

A. Yes, at one ranch I know. At La Cebolla.

Q. Where were the employés generally employed for the ranch?

A. Some were employed here and some of them he had employed continuously. Some of them stayed for several years with him.

Q. Who paid them off if you know?

A. Old Frank generally, and Henry too, I suppose. I
153 have seen both of them giving goods to their servants. That is what you call them, servants or mederios.

Q. How did Frank Metzger speak of the business, of the ranches and store, with reference to the two, if he spoke of it at all. As to whether it belonged to the two or belonged to one of them?

(Objected to as leading by defendant's counsel.)

A. He spoke as though it belonged to both of them.

Q. What kind of an expression did he use?

A. I now remember one time he said that Henry didn't have nothing but the name—that he was the owner of the property. One time he got a little excited here. We were at the house of Mr. Green that day and old man Green was joking with him, telling him he didn't have nothing, that he was a poor man.

Q. Told who?
A. He told Metzger. Old man Green told Metzger that Henry had everything. Frank Metzger answered him that he was badly mistaken, that if there was any poor man there it was Henry Korte—that he was the owner of everything and Henry Korte did not have but the name of having, but he didn't have.

(Colonel PRITCHARD: I enter an objection to that answer as this declaration purports to come from a party other than those in interest in this suit.)

Q. Go on and tell everything that took place there or was done there?
A. Then he said "If anybody wanted to be satisfied who had the money and who was rich, to come with him to his house," and he insisted on my going but I didn't want to go into the house, but others went in.
Q. Who went in?
A. It was Doctor Gandert and I think Pedro Valdez, too.
Q. From 1873 to the death of Metzger, state whether or not you requently spoke with Korte about the business of that store and these ranches?

(Objected to by defendant's counsel.)

A. Not frequently.
Q. Did you sometimes speak to him?
A. Sometimes I did.
Q. In talking to you about the business whose business did he treat that as belonging to, or being the business of whom?

(Objected to as it calls for the conclusion of the witness.)

A. He treated it as belonging to old man Metzger and himself, Henry Korte.
Q. How did he call it, or designate it?

(Objected to by defendant's counsel.)

A. As "our" business.
154 Q. What would he be speaking about when he would talk in that way saying "our business"?
A. When he was undertaking to do something about the ranches or stock he always said "we."
Q. And about the store also?
A. Yes, sir.
Q. Who did Henry Korte, if you know, look to as the head of that business?

(Objected to by defendant's counsel.)

A. He looked to the old man Metzger to be at the head of the business.
Q. How do you know?
A. He respected him.

Q. How did he look to him as the head of the business? How do you know that?

A. I could not say how.

Q. Did you ever hear him talk about it?

A. He always consulted the old man about doing any business, that is how I think he acted. Many times I saw Henry when he would not decide anything unless he would get the consent of the old man, and one time that happened me as I stated before awhile ago.

Q. You have already given that?

A. Yes, sir.

Q. Were you in the probate court up here one time when Henry Korte was examined under oath as a witness?

(Objected to by defendant's counsel.)

A. Yes, sir.

Q. Was there anything said by him in his evidence given on that occasion with reference to the partnership—to any partnership between himself and Metzger?

A. Yes, sir.

Q. State what was said?

(Objected to by defendant's counsel.)

A. Henry Korte was questioned. I took some of his testimony in writing which I have not got with me.

Q. If you remember the contents, state it.

A. Yes, sir; I remember a few questions Henry Korte was asked. He was asked if he was in partnership with old man Frank Metzger, he answered that he was. He was questioned if he had ever dissolved partnership with old Frank Metzger, he said "no."

Col. PRITCHARD to witness: Now will you please give the dates.

Mr. CATRON to witness: Go on and state the balance of it.

A. He was questioned as I have stated already, and he was questioned if they had dissolved partnership before the old man died, he said "no." He was questioned how he come to be the
155 head of the firm, he answered "that the old man was unable to work and he put him at the head of the business." That was his answer. I think I have that in writing. I was listening to the questions and I think I was putting these questions myself.

Q. Whereabouts was that?

A. Here in this court-house.

Q. In the court-house here in Mora, in the probate court?

A. Yes, sir.

Q. Do you remember about when it was?

A. Well, I can't remember very well. It was after the letters of administration had been granted.

Q. After the death of Frank Metzger?

A. Yes, sir.

Q. On Frank Metzger's estate?

A. Yes, sir.

Q. About how long after the death of Metzger?
A. Shortly after.
Q. When you speak of the "old man" in your testimony heretofore given, who do you refer to?
A. I refer to Frank Metzger? When I refer to "Henry" I refer to Henry Korte.
Q. Do you know anything about their herd of cattle, the number of the herd or anything else connected with it?
A. I don't remember the number of cattle. Henry Korte when he went to deliver the cattle he stopped at my house and he told me that they had sold their stock. He said, "We sold our cattle, Mr. Nolan."
Q. What cattle did he refer to?
A. It was the cattle that he and the old man Frank Metzger owned.
Q. Whereabouts?
A. On the Arroyo de las Utas.
Q. In this county?
A. Yes, sir.
Q. In what year was that, more or less?
A. I am not positive, I never paid much attention.
Q. Was it after 1880?
A. I could not be positive.
Q. Was it after 1873?
A. Of course it was. Yes, I am most sure it was.
Q. Do you know who had charge of the cattle for him?
A. Well, I knew the fellow that stayed in the Cebolla. He is dead.
Q. I am speaking about his mayordomo down there.
A. I am under the impression that Jose Chavez who is here in town was his mayordomo too.
Q. Didn't he have another man who was his mayordomo?
A. I know of but these two. I can't think of the other man's name, he died some two years ago.
156 Q. Did he tell you what he sold these cattle for per head?
A. No, sir; he told me he had a good many. I did not see him when he came back. I saw him when he went down to deliver them.
Q. Do you know who he sold them to?
A. No, sir; he told me the name, but I don't remember it.
Q. Was it a man named Cooks?
A. I think that is the name.
Q. In what name was the business carried on, if you know, after 1873?
A. Carried on in the name of Henry Korte.
Q. How old a man was Frank Metzger when he died, if you know?
A. The old man Metzger was in the neighborhood of seventy years, more or less.
Q. For the last few years prior to his death, what was his condition as to health and his capacity to get around?

A. He was very clumsy. He would sit down and stay there for hours, and he used to get around very slow in the store to sell goods.
Q. Was he in good health or not?
A. He appeared to be in good health, but not strong.
Q. Did he travel around much or not?
A. No, sir; only in the store and out on the porch.
Q. Did he go to the ranches sometimes?
A. No, sir; he could not go.
Q. Didn't he go to the ranches sometimes?
A. For many years I did not see him go to Buena Vista. He told me he could not go.
Q. Was not able to travel around?
A. No, sir.
Q. That was the last few years before his death, you mean?
A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

Q. You say you are a practitioner at law?
A. Yes, sir.
Q. You are an attorney in this case, are you not?
A. Yes, sir.
Q. Your compensation is contingent, is it not?
A. Yes, sir.
Q. It depends upon success in this case, does it not?
A. Yes, sir.
Q. Have you any contract about this matter with any one?
A. I have an agreement with Mr. Romero, or rather he made the agreement; and he is the man that employed me—Rafael Romero.
Q. He is the one that employed you?
A. Yes, sir.
157 Q. What are the terms of that agreement?
(Objected to by complainants' counsel.)
A. Mr. Romero agreed with me to give me a certain portion in case he would succeed.
Q. What was that portion?
A. I do not know. He did not know himself. He did not know, and I don't know on that account.
Q. No distinct understanding between you and Romero then?
A. About what?
Q. About what you should get in case you succeed.
A. No, sir.
Q. You understand there is a contract between these complainants and Romero, do you?
A. I have not seen it. He told me so. I took his word for it.
Q. In whose name is the contract?
A. I have not seen the contract; I do not know.
Q. Were you the attorney for these complainants at the time that you say Henry Korte made certain statements in the probate court?
A. Yes, sir.

Q. You were the attorney at that time acting against Henry Korte, were you not?

A. Yes, sir.

Q. Were you in possession of the secrets of the business that you referred to during the lifetime of Metzger?

A. The secrets? I don't know of any secrets.

Q. Were you ever in the employ of either Frank Metzger in or about the store of Metzger or Korte?

A. No, sir.

Q. Did you ever hear either one of them state that they were engaged in a copartnership business after 1874?

A. Yes, I heard Henry Korte state that in private and in court—that he hadn't dissolved partnership.

Q. Now do you say that Henry Korte told you in private that he was in partnership with Metzger. Please state the time and place, and in whose presence.

A. In my house. I can't remember certain the year or the date, because I never made a memorandum of it. He told me that they were in partnership, but that he was the head man of the business; that the old man was too old. Then he told it in here under my questioning in court that he had never dissolved partnership; that he was managing the business for both of them. That is what he said in court.

Q. Do you mean to say that either one of them was in the habit of explaining to you what their business was, and what they were doing?

158 A. Not very frequently, but occasionally. In conversation with the old man he used to tell me that he was uneasy—(when he and I were alone he was a confidential friend of mine)—he used to tell me that he was uneasy about Henry drinking so much; was afraid that Henry could not handle the business for both of them; he was getting old, and he was afraid their business would go back on that account.

Q. Did he ever show you the book?

A. No, sir.

Q. You say he spoke of "our ranch" and "our business" frequently?

A. Yes, sir.

Q. That is Metzger did?

A. Yes; also Henry.

Q. Is there anything strange about that?

A. I don't see anything strange about it.

Q. Was that the only thing you ever heard Metzger say to the effect that he was in copartnership with Korte?

A. Why Henry Korte told me that.

Q. Did Frank Metzger tell you he was in copartnership with Korte?

A. Yes, sir.

Q. Where, when and before whom?

A. He told me right here in Mora.

Q. When?

A. I could not be certain of the day. He told me that more than one time.

Q. Before whom?

A. I can't remember before whom; before people and I think in private too.

Q. Mention one person.

A. I could not mention one person, but it seems to me Henry was present; that is after he was married, because Henry was a friend and came up here, and the first thing I knew the old man took him in partnership, and Henry told me that the old man had taken him in partnership, that he had the money.

Q. When was that?

A. That is another date I can't remember.

Q. Was it prior to 1874 or subsequent to that time?

A. It was prior to 1874.

Q. Then since 1874 you have heard no such declaration from Metzger?

A. Not from Metzger, from Henry I have.

Q. You heard that declaration from Henry in the probate court?

A. And in another place too.

Q. Since 1874?

A. Yes, sir.

159 Q. Mention the time and place.

A. I could not mention the date, I have referred to it before.

Q. Where was that, and before whom?

A. I will state that I didn't want to ask for any borrowed money——

Col. PRITCHARD: I object to the latter part of the answer of the witness as not being responsive.

A. Other times he made the declaration to me in his store.

Q. When?

A. A short time before the old man died.

Q. How long?

A. I can't say very well how long; it was in court time; either probate court, commissioners' court or district court.

Q. Who was present?

A. I will state how it happened. The store was full of people.

Q. Who was present and heard this besides yourself; mention a man.

A. Old man Metzger heard it.

Q. Who besides Metzger heard him make that statement?

A. I don't know that anybody heard it. I spoke low to him; I took him in one corner and told him this. He says, "All right, Nolan, I will let you have anything you want, but I don't like to do it," he says, "without the old man's consent."

Q. Was that all he said?

A. "Go to him and if he is willing it is all right." That is what he told me.

Q. Was that all he said?

A. Yes, sir.

Q. Did he in that conversation tell you he was a partner of Metzger?

A. It made me believe so. I was always under that impression from the general talk and the general way of doing business they had.

Q. His declarations made you believe they were partners?

A. I was almost satisfied they were partners.

Q. You say you were almost satisfied?

A. I was satisfied they were in partnership.

Q. Were you satisfied because Henry had said they were in partnership or because Henry had said "it was all right, but he would like to have you see the old man"?

A. Yes, he wanted the old man satisfied.

Q. What is your satisfaction based upon?

A. What convinced me of that partnership is that he didn't like to do business, loan money, or give credit without the consent of the old man. That the old man was the controller of it and therefore he wanted me to talk to the old man.

160 Q. Why is it you hav'n't said anything about the old man being the "controller" of it before?

(Objected to by plaintiffs' counsel.)

A. Because the word did not come to me.

Q. What did he speak of Metzger being the controller of?

A. Of all the business they had between them.

Q. Now Henry Korte used those words, did he—"of all the business they had between them"?

A. No, sir; I say that myself.

Q. Then Henry Korte never said that, the way I understand you?

A. Henry Korte said he would not like to do business without the old man's consent. That made me believe he was controller.

Q. Now what business did he say he would not like to do without the old man's consent?

A. He didn't say any particular business.

Q. What business were you talking to him about?

A. About borrowing money, and I borrowed it with the old man's consent. He ordered him to loan me the money.

Q. He ordered him, you say?

A. Yes; he told him to loan me the money.

Q. Now do you know whose money you borrowed?

A. Yes, sir, to the best of my belief.

Q. Well whose, to the best of your belief?

A. Henry Korte's and old man Metzger's. I paid the old man that money myself.

Q. Did they tell you they were jointly interested in that money that you borrowed?

A. No, sir.

Q. Now the fact is, you inferred that money belonged to them both, did you not?

A. Yes, sir.

Q. But it is also a fact that you didn't know a single solitary fact about it, is it not?

A. Well, I did.

Q. You say you did?

A. I did know I got the money with the consent of both of them.

Q. Is it not a fact that you didn't have any knowledge of your own whose money that was, from the fact that neither of them told you whose money it was?

A. Yes. I went to borrow the money from one of them. He would not loan it to me unless he would get the consent of the other. I went to the other. The other said it was all right, "Let him have it, Henry."

(Mr. CATRON to witness: The old man stated to Henry to let you have it?)

A. Yes, sir.

161 (Col. PRITCHARD to witness: You don't know whose money that was, do you?)

A. It was Henry Korte's and Frank Metzger's.

Q. Who told you that it was Henry Korte's and Frank Metzger's money?

A. It is just as I said. I got it from both of them. My construction of that is that it was partnership money.

Q. Who told you that money belonged to Frank Metzger and Henry Korte?

Objected to by plaintiffs' counsel because it has been previously asked, and there is no proof that the witness says anybody told him it belonged to Frank Metzger, or that it belonged to either one or both of them.

A. Nobody told me. I conceived myself it was their money, the money of both of them.

Q. Nobody told you that money belonged to them both? Then is it not a fact that you haven't any very accurate knowledge that it did belong to them both?

A. My answer was and my answer is now, that I was at the time and I am now, sure that the money belonged to both of them.

Q. If nobody told you that money belonged to them both, then is it not a fact that you haven't any very accurate knowledge that it did belong to them both?

A. I say this, that at that time, by their actions, the money belonged to both of them, for I could not get it without the consent of both of them.

Q. Now answer the question, yes or no (referring to question 69).

A. My best belief is that it belonged to them both.

Q. Is that belief based — joint owners of that money or is it merely an inference of your own?

A. It is an inference of my own. It is by statements made by these parties to me at previous times.

Q. Then those parties, at previous times, stated to you, did they,

that they were the joint owners of that money that they loaned you?

A. They stated to me in previous times that they were in partnership of everything they had.

Q. When was the last time that Metzger made that statement?

A. That was a short time before they sold that stock, you mean? Yes, sir.

Q. What were the dates?

A. I said I could not give dates.

Q. Mention the year.

A. It was after 1873, because it was in the neighborhood of the time I sold my place in Wagon Mound.

162 Q. Do you mean your place to Chapman?

A. Yes, sir.

Q. Do you mean to say that Henry Korte and Frank Metzger sold those cattle in 1874 or 1875?

A. I am not certain I stated.

(Objected to by complainants' counsel on the ground that the witness has not stated or intimated they were sold in 1874 or 1875.)

A. I can't be certain about the dates or the year. I never kept a memorandum of it; I didn't think it would be necessary.

Q. Do you know whether Frank Metzger sold and conveyed all of his interest in the partnership business which existed prior to 1874 to Henry Korte?

A. No, sir; I didn't know that he sold out at all.

Q. Can you state that this declaration as made by Frank Metzger that he was a copartner of Henry Korte was made since the year 1874?

A. Yes, sir; he told me. I will answer you in this way. He told me "Nolan, I put Henry at the head of the business; I am too old. I put him at the head of the business so he will handle all our properties and everything that we have."

Q. Now what do you mean by that answer? Do you mean that he had told you since the year 1874 that he was a copartner of Henry Korte's?

A. Yes, sir; I think he mentioned that.

Q. Mention the year that he told you that.

A. I could not be certain as to the year. I told you I never paid any attention to those things. I remember the conversation I had.

Q. But you can't remember the year?

A. No, sir; nor the day.

Q. How old was Frank Metzger in the year 1874?

A. He never told me his age; he always used to tell me he was very old.

Q. Was he a very old man at that time?

A. He didn't look to be a very old man. He was one of those heavy-constitution men, heavy built, but he was growing very feeble. I took the old man always to be in the neighborhood of seventy years old, more or less.

(Mr. VEEDER to witness: About the time he died?)

A. Previous to that time when I had the conversation with him. When he told me he had put Henry at the head of the business, he must have been then over sixty.

Q. You think he was over sixty when he made this statement?

A. Yes, sir.

163 (Mr. VEEDER: You knew him for a number of years after that, didn't you?)

Q. Yes, sir.

(Col. PRITCHARD: Do you remember about how many years you knew him after he made this statement?)

A. I knew him until he died.

Q. You knew him ten or twelve years then after he made this statement?

A. Yes, sir.

Q. How frequently were you in his store during the last ten or twelve years before his death? I mean the store of Henry Korte?

A. Every time I came to Mora I went to see the old man. He would come over here to get me to come and have a chat with him.

Q. You didn't live in Mora, did you?

A. No, sir.

Q. How far from Mora did you live?

A. I lived for a little time in Mora. In 1853 I came to Mora and lived here a little while. I went from here to Upper Town, then to Manuelitas, stayed there about three years, and then I lived in the county of Mora since that, and most every time when I came to Mora I would go over and have a talk with the old man and Henry and the family.

Q. Did you live in the town of Mora for ten years previous to the death of Metzger?

A. No, sir, I didn't live permanently in Mora.

Q. How many times a year, on an average, did you visit Mora?

A. I generally came to Mora every two months, for say the last twenty-five years.

Q. Then you have averaged six times a year for the last ten or twelve years, is that so?

A. Yes, sir.

Q. Do you know of your own knowledge what arrangements existed between Henry Korte and Frank Metzger up to the time of the death of Metzger and for a great many years previous thereto, as to the business of Henry Korte?

A. At the time of his death I don't know what was their last arrangements, but previous to that to the best of my belief they were partners.

Q. You understand, Mr. Nolan, I presume, lawyer as you are, that testimony as to your belief is not testimony now I ask you what knowledge, if any, did you have of the conditions of

164 the business relations that existed between these men at the time Metzger died and for a dozen years previous thereto.

A. I know it through their statements.

Q. What statements did they or either of them make to you in which they explained the actual conditions of their business relations?

A. Frank Metzger told me after the marriage of his daughter to Henry Korte he had taken him in partnership, and he told me several times after that that he was in partnership with Henry Korte. Henry Korte told me himself that the old man had taken him in partnership.

Q. Now was this not between the years 1867 and the year that Henry Korte married Metzger's daughter?

A. Yes, about that time.

Q. And the year 1874. You say that is about the time he made that statement?

A. After the marriage.

Q. And before the year 1874 was it?

A. That they made these statements?

Q. Yes, sir.

A. Well, after that.

Q. What do you mean by that?

A. After that the old man told me he was a partner.

Q. Can you state upon your oath whether this statement you testified about was made after Metzger sold and conveyed his interest in the partnership business to Henry Korte?

(Objected to by plaintiffs' counsel because there is no proof in this case that Metzger ever sold and transferred anything to Henry Korte.)

A. I don't know of any transfer at all.

Q. Then you can't answer whether it was made after or not?

(Objected to by plaintiffs' counsel because the witness has stated he knows of no transfer, and the question is based upon premises that don't exist so far as the witness know-.)

A. No; because I don't know of any transfer whatever. I will state furthermore, Frank Metzger told me that owing to his age he had put Henry at the head of the business.

Q. You have stated that forty times already.

A. Well, that is my knowledge.

Q. That was stated when they were partners, was it not?

A. I guess so. They were partners all the time to my knowledge.

Q. You say they were partners all the time to your knowledge; what is your knowledge based on that they were partners all the time?

A. Because they were running the business together. The old man was clerking.

165 Q. Now is it not a fact so far as you know, that at the time Metzger died and for many years previous thereto, he was simply in the employ of Henry Korte in this store?

A. No, sir; I don't think he was in the employ of Henry Korte;

he was the boss. He was the owner of the property. He stated that to me. He was a full partner; that is what he meant.

Q. You say that he stated to you that he was the owner and boss of that property. Mention the year that he said that to you—that he was the owner and the boss of the property.

(Objected to by complainants' counsel on the ground that the witness did not say Metzger was the owner and boss of that property, the witness did not say that Metzger said so.)

A. He said that he was owner in the capital with Henry Korte; he further stated that Henry Korte had to attend to the outside business and him the inside.

Q. Now I understand you to decline to give the year in which he made that statement?

A. I can't do it. Colonel, I have got some memoranda that I could probably refresh my memory with as to that.

Q. Do you pretend to know the actual business connections and relations of these men for the last ten or twelve years before Metzger died?

A. Not outside of what they told me.

Q. Do you pretend to say that they ever told you during the last ten or twelve years of Metzger's life what their actual business relations and connections were?

A. Just by their conversation to me. Old Frank told me they were in partners.

Q. Did he ever state to you what interest in the partnership he owned?

A. Well, he told me once that Henry being his son-in-law, he had given him a one-half interest. That his son-in-law only brought in either four or five thousand dollars, after paying off the expenses of the marriage he had about four or five thousand dollars after he married Juanita, but he had no other children, and he said he has got a one-half interest of the whole capital.

Q. Now, is it not a fact that he told you this soon after Henry Korte's marriage?

A. Yes, sir, he told me that soon after Henry Korte's marriage.

Q. Do you know how long that partnership continued of your own knowledge?

A. I based my opinion to know on Henry Korte's telling me in court. He said he never dissolved partnership. I think it exists today.

166 Q. You think that Korte and Metzger are partners today, do you?

A. Yes, sir; the capital belongs to both of them I think, today?

Q. Aside from what you stated you heard Henry Korte say in the probate court have you any actual knowledge how long that partnership existed after Henry Korte married the daughter of Frank Metzger?

A. Seems to me that my answer there covers this.

Q. Read the question to him, Mr. Master.

(The last question was here read to the witness.)

A. I don't know as to that, I think they were in partnership when he died.

Q. Can't you answer that question? Answer it or don't answer it.

A. Oh, well, you need not get so cross. Don't you jump onto me. I testify to the truth. What I think is proper. My language is very bad and I am very hard to hear. If you want me to answer your questions you get an interpreter from this on.

(The master here repeated question 120 to witness.)

A. It existed until the last statement I got from both of them. According to their statement I can answer it in that way, and in no other way.

Q. Now you can't answer when these statements were made, can you?

A. I stated that I didn't remember the time, the year, or the month, or the day, or the week.

Q. Have you any knowledge that Henry Korte didn't buy out the interest of Frank Metzger after their partnership was established?

A. I don't know anything about it if he did buy it.

Q. Have you any knowledge that he didn't do so?

A. No, sir.

Q. So far as you know he might have done so, is it not true?

A. He might have done that, I don't know.

(Mr. CATRON: The last question is objected to as a mere matter of opinion.)

Q. And so far as you know Frank Metzger had no interest as a partner in the store of Henry Korte or in any of the property now claimed by Henry Korte at the time of Metzger's death?

A. Well as far as I know to the best of my belief, that is the way I understand it—to the best of my belief he was a full partner at the time of his death.

Q. You have a great deal of confidence in your belief, have you not, Mr. Nolan?

167 A. Well when I believe a thing I think it is true and don't believe in anything that is not true.

Q. But is it not a fact that a man is liable to be mistaken in his belief and is it not also a fact that you have been frequently mistaken in your belief?

(Objected to as it calls for the opinion of the witness.)

A. We are all subject to be mistaken. I make mistakes myself and I think I have made mistakes but I am not mistaken all around. I am not mistaken in everything. That I believe and that I say.

Q. Then as I understand you, you are swearing to a partnership of these men at the time of Metzger's death upon that belief.

Q. Partly on my belief and partly on Henry's statement in open court under oath.

Q. You regard Henry Korte as a truthful man do you?

A. I think that when a man swears under oath he gets as close to the truth as possible.

Q. You know what my question is, I would like to have you answer it?

A. I do, when he is under oath.

Redirect examination by Mr. VEEDER:

Q. When you stated you believe a thing that belief is usually founded upon some facts is it not, within your knowledge?

A. Yes, sir.

(Mr. CATRON to witness: State whether or not that business continued just the same after 1874 as it did before 1874?)

A. Just exactly, to my knowledge.

(Mr. CATRON to witness: I mean as to the store, ranches and cattle.)

A. Yes, sir.

(Mr. CATRON to witness: Metzger after that tended to the business on the inside, you say?)

A. Yes, sir.

(Mr. CATRON to witness: And Henry Korte on the outside?)

A. Yes, sir.

(Mr. CATRON to witness: Otherwise it continued just the same?)

A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. Didn't you also state Henry Korte tended to the business on the inside?

A. When he was at home he helped the old man Metzger.

Q. Is it not a fact that the business did not continue the same after 1874 for the reason that from the year 1880 or about that time the business ran down?

168 A. What do you mean by the business running down?

Q. That it was not kept up to the usual standard of goods and everything else.

A. They kept everything going. Sometimes they had more goods than at others, but the business was running all right.

(Mr. CATRON to witness: After the name of that firm was changed to Henry Korte state whether or not Metzger and Korte both told you that they were still in partnership?)

A. It seems to me I answered that question. Frank Metzger told me that he had put Henry at the head of the business, to manage the business; that he was getting too old.

(Mr. CATRON to witness: Was that after it was changed to the name of Henry Korte?)

A. Yes, sir.

(Objected to by Col. Pritchard on the ground that there is no testimony here that this witness knew the business being changed to the name of Henry Korte.)

(Mr. CATRON to witness: Did Korte tell you also after that, that they were partners?)

A. Yes, sir.

(Mr. CATRON to witness: Was it after the business was changed to the name of Henry Korte that you had the conversation with him at your house when he was going down to sell the cattle?)

(Objected to by defendant's counsel as leading.)

A. Yes, sir.

FERNANDO NOLAN.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE. } In Chancery.

I, William E. Gortner, official stenographer by appointment, for the fourth judicial district court of the Territory of New Mexico, do hereby certify that the above and foregoing is a true and correct copy of the testimony of the witnesses examined before the master in the above-entitled case as the same was taken down by me.

Witness my hand this 15th day of May, A. D. 1888.

W. E. GORTNER,
Official Stenographer.

169 DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE *et al.* }

Testimony of William Gandert, Taken before the Master in the Above-entitled Cause Thursday, October 11th, 1888.

Present: Thomas B. Catron, attorney for plaintiff-, and G. W. Pritchard, Esq., attorney for defendants.

WILLIAM GANDERT, being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows, being examined by Thomas B. Catron, Esq., attorney for plaintiff-:

Q. What is your name, age, residence and occupation?

A. William Gandert; I live at Agua Negra, Mora county. I am a farmer.

Q. How long have you resided in Mora county?

A. Thirty-four years.

Q. Were you acquainted with Frederick Metzger, otherwise called Frank Metzger?

A. Yes, sir.

Q. Where did he live?

A. Right here in town, in Mora.

Q. How long did you know him?

A. I knew him since I come to this country; I knew him in the old country but there I was very little acquainted with him. I knew him here in Mora county.

Q. How long?
A. Thirty-four years, when I come here he was already here.
Q. Do you know when he died?
A. Yes, sir.
Q. Are you acquainted with Henry Korte, the defendant in this case?
A. Yes, sir.
Q. Do you know what business Frank Metzger was engaged in prior to June 9th, 1873?
A. He was engaged in the mercantile business. He had cattle ranches, and also farming ranches. He had a store right over here.
Q. If you know, what was the extent of his business, whether it was a large business or a small one?
A. Well, he had always quite a large stock of goods on hand at the store. He always had a good assortment of goods in the store, that I could see, and he sold some of them at wholesale.
Q. How much of a stock of goods did he carry, more or less, if you know?
A. Well, that is hard to tell.
170 Q. To the best of your judgment?
A. The wholesale price I think would be about ten thousand dollars.
Q. At wholesale price here?
A. Yes.
Q. Have you ever carried on the business of merchandising?
A. Yes, sir.
Q. What opportunity had you for seeing and knowing about the business of Metzger?
A. I bought goods of him myself.
Q. State whether you were intimate with him or not, whether you were friends.
A. Yes, sir.
Q. State whether or not you frequently saw him and talked with him.
A. Yes, every time I come to town, that was the place where I stopped.
Q. Now, what other property had he that you know of besides this store?
A. He had a ranch at Cebolla.
Q. Did he have the property that the store was in in Mora?
A. Yes, sir; that lot and house there belonged to him.
Q. What was that property worth at that time, if you know?
A. At that time it was worth four or five thousand dollars.
Q. He owned that property, did he?
A. Yes.
Q. What ranches did he have? Give each one of them?
A. He had a hundred yards of land up here opposite town.
Q. On what side of town—the north side?
A. On the northwest side.
Q. One hundred yards wide, and how long?

A. It was very long—about a mile and a half, more or less.
Q. Was all of that land cultivatable land?
A. Yes, it was all under ditches.
Q. And all cultivated?
A. Yes, sir.
Q. What was that piece of property worth in 1873?
A. One dollar and a half a yard. I could not say what the land was worth then; grain was high and land was high, too.
Q. Doctor, don't fool around about the question. Answer it.
A. Well, some land sold for five or six dollars. I believe Metzger paid four or five thousand dollars for it. He took it from Branford—he was security for him—and when he moved away Frank took the land to pay the debt in Santa Fé for him.
Q. State what it was worth in 1873 about, more or less, that piece of land. You can give us some idea about it—the whole piece. How much was it worth?
171 A. It was worth five hundred dollars in 1873, because land was high then. Now you could not get it for that.
Q. What other ranch did he have?
A. He had a ranch up at Agua Negra.
Q. How much was there of that?
A. I believe the deed called for five hundred yards, but it is not five hundred yards, because I planted that ranch myself a good many years.
Q. What was it worth in 1873?
A. About three hundred dollars.
Q. What other ranch did he have in 1873?
A. He had a ranch in Cebolla.
Q. How much was there of that, if you know?
A. I don't know the boundary, or how much he had there. I have not seen the boundary. He had a big ranch there. He claimed a great deal of land there, so he told me. I don't know what the distance was, but he claimed miles there.
Q. Claimed "miles" there?
A. Yes, sir.
Q. Do you know what that ranch was worth in 1873?
A. About six thousand dollars.
Q. What other ranches did he have at that time?
A. He had the Pinard ranch at Buena Vista.
Q. Was that in Mora county?
A. Yes, sir.
Q. How far is it from the Cevolla ranch?
A. It joins the Cevolla ranch.
Q. Do you know what that property was worth in 1873?
A. I could not tell. Of course, they had a great many trees there—an orchard of apple trees. I don't know how many they planted there. I believe they planted fifteen hundred the first time.
Q. More or less, what was that ranch worth in 1873, if you know? Those trees were all planted there before 1873?
A. He had only about 1,500 planted there.

Q. What was it worth in 1873, that is what I am talking about—the improvements, the house, and everything on it?

A. That ranch at that time would be worth from fifteen to twenty thousand dollars.

Q. What is it worth now?

A. I believe now it would be worth forty thousand dollars.

Q. What is the Cevolla ranch worth now?

A. At least ten or fifteen thousand dollars. There is not many improvements on the Cevolla ranch.

Q. Where is that Cevolla ranch?

A. Right where the wagon road crosses. I don't know the boundaries.

Q. Did he have any other ranch?

A. Well, he had a cattle ranch.

172 Q. Where?

A. I don't know. Down below here somewhere on the prairie. I have never been at it.

Q. Did he have any cattle?

A. Yes, he had cattle there.

Q. How many cattle did he have, more or less?

A. In 1873, I don't know.

Q. Did he have cattle in 1873, do you know?

A. Yes, sir.

Q. Now, in whose name, if you know, were these properties prior to 1873, that you have mentioned, prior to April 12th, 1873?

A. All I know it was Frank Metzger's.

Q. Do you know anything about who owned these properties after April 12th, 1873?

A. All these properties?

Q. Yes.

A. I believe Henry Korte and Frank Metzger—except what was sold.

Q. Sold to other people?

A. Yes, sir; I believe this one hundred yards of land was sold and the Agua Negra ranch was sold.

Q. How do you know this land belonged to Henry Korte and Frank Metzger after 1873?

A. I seen them always there. When Henry Korte got married with Frank Metzger's daughter they went into partnership, and I don't know if that real estate went into the concern with them or not, but I know that it did belong to Frank Metzger.

Q. Well, after 1873, had you any conversation with them or any other means of knowing how that property was held by them, how it was treated, how it was conducted? Tell me who managed and controlled the property generally—these ranches and the store.

A. Both of them.

Q. Well, did you ever hear them saying anything about the property—speak about it, as to who it belonged to?

A. Well, there was some conversation which I had with the deceased, and Korte was present and joined in it.

Q. When they spoke about this property, how did they speak about it; as whose property?

A. They always spoke about it in the plural, "we." They always said "our property," "our ranches."

Q. Who did that; both of them?

A. Yes, sir.

Q. They would say "we" in speaking about the property?

A. Yes, sir.

Q. Would they say in speaking about the property "my property," or "our property"?

A. "Our property."

173 Q. Did you ever have any talk with Metzger about it?

A. Yes, sir; I had a conversation with him.

Q. Go on and give the conversation with Metzger that you had.

(Objected to by Colonel Pritchard on the ground that Metzger is dead, and not a party to this suit.)

Q. State first where did you have any conversation with Metzger.

A. At his house.

Q. Who was present?

A. Henry Korte was present during part of it; some of it me and Frank Metzger was by ourselves.

Q. What did Frank Metzger say when Henry Korte was present, if anything, about the property or his interest in the property?

(G. W. PRITCHARD to witness: State only that part he said when Henry Korte was present, if you know any part of it.)

A. I have seen them always managing the business together from 1867 on.

Q. I am asking you from 1873 on.

A. From 1873 to 1876 I don't know anything about it.

Q. You were not here then?

A. No, sir.

Q. Well, after 1876.

A. I have seen them alway, both of them, together there and speaking together, and I seen Frank give orders to Henry what to do at the ranch, about the office, about the farm, and I saw him send Henry to the cattle ranch.

Q. Which one of them seemed to exercise the most authority and the most control over the business?

(Objected to by defendant's attorney on the ground that it calls for the conclusion of the witness.)

A. I believe the old man did—Metzger.

Q. Who; Frank Metzger?

A. Yes, sir.

Q. Didn't you have a conversation with Frank Metzger in the presence of Henry Korte in his house there some time about the year 1876, in which something was said about Frank Metzger still having his interest in all this property?

(Objected to by defendant's counsel as leading.)

A. Yes, sir.

Q. Now state what that conversation was with Frank Metzger in the presence of Henry Korte?

A. Well, it was in 1877 or 1878; I am not certain of the day or year. I think it was in 1877 or maybe 1876. One night we
174 were down at Henry Green's. We had played dominoes, and Frank Metzger and Henry Green got into a kind of a quarrel. Green was a little excited, and he told Metzger that he was no man, that he was a "peon," that he was a man that had no property; that he was working for twenty-five dollars a month, and Frank got a little excited about that, and they had quite a quarrel there. It was in the night, and I went home with Frank and Korte opened the door for us, and we went into the house. Korte was there. Henry Korte asked: "What is the matter, Frank?" "Well," he says, "that God-damned Green he insulted me. He told me I was a peon. I can buy him and the whole town here with my own cash money, and need not take my property. I can buy it with cash money." Then he went into a room and brought out a square box, one-half the size of that table (referring to table about three and a half feet long). It was not very high; it was more like a drawer, and it was filled with gold, fifty-dollar gold pieces in it, twenty-dollar pieces, ten-dollar pieces, five-dollar pieces, and they were all piled up in this box.

Q. Didn't Metzger say there that he not only had that, but he owned all the interest he ever owned in the ranches, property and store?

(Objected to as leading by defendant's counsel.)

A. He said he need not take his interest in the property, what he had, but he could buy the town with cash money.

Q. Did he state there to you in the presence of Henry Korte, not only did he have this money here, but he still had his interest in the ranch?

(Objected to by defendant's counsel as leading.)

A. Well, I said——

Q. Didn't he state something to that effect?

(Objected to by Mr. Pritchard as leading and not proper examination.)

A. Yes, sir; he said it. He said he could buy the whole of the merchants in Mora county with his private money, and without touching any of his property.

Q. Didn't he also say to you, and in the presence of Henry Korte, that he still owned all of his interest in the ranch and store?

A. Well, it was understood——

Q. Didn't he say so in so many words?

(Objected to as leading and not proper examination.)

A. He said at that time he did not need the property. "I can buy them all with my own money," he says.

175 Q. I want you to answer this question: Didn't he state at that time in the same connection—didn't he say, "I still own all my interest in the ranches and store the same as I always owned it?" Didn't he state that? Answer yes or no.

(Objected to as leading and not proper examination.)

A. I answered that question. He said he owned that property yet; that he was able to buy them all without the property he had there—the cattle and everything he had.

Q. He said he still owned this property, did he?

A. Yes, that he still owned that property, and without touching that property he could buy them with his private money.

Q. What property was he talking about owning?

A. Of course he meant the property here in town and the ranches and cattle and so forth.

Q. That was what he was telling about, was it?

A. Yes, sir.

Q. Was that said in the presence of Henry Korte?

A. Yes.

Q. Did Henry Korte make any statement or deny it?

A. No, sir; he did not. He only said: "Frank, what is the matter?" He says: "Frank, take that money away." He was scared.

Q. Who was scared?

A. Henry Korte when Frank brought out that money in the middle of the night.

Q. Did you ever hear Henry Korte say anything about that property they were managing?

A. That night?

Q. Any time.

A. Not that night.

Q. At any other time did he ever speak to you about the cattle or the sale of cattle?

A. Yes, when they sold the cattle he told me he sold them in different bunches, not in one bunch. When he sold the last one he said, "Well, we sold all our cattle now. We have sold the ranch and all the place. We have turned over everything now. I want to turn over the brand."

Q. Did he say "I" have sold or "we" have sold?

A. He said "We have sold."

Q. Who was he talking about?

A. Frank. Henry and I were present.

Q. Who did he mean by "we"?

A. Frank Metzger and himself.

Q. Did you ever hear him say anything about the ranches? How did he speak about them, if he said anything about them, in speaking about the ranches, if you ever heard him speak of them

176 that is the Pinard ranch and the Cevolla ranch, and the house where the store was, and the two other ranches at this place and at Agua Negra? How did he speak of them, if you ever heard him speak of them; as belonging to himself or belonging to himself and any one else?

(Objected to by defendant's counsel as leading and suggestive.)

A. He spoke of them as though they belonged to both.

Q. Always spoke of them as belonging to both himself and Metzger?

A. Yes, sir. He always said, We have to do this and the other. We have got to go and get the grain in, and so forth. He never spoke of it as his own. He spoke of it always as "we."

Q. After 1876 state how Metzger and Korte did, or how the business of these ranches and that store was conducted; whether it was conducted as property of Henry Korte, or whether it was conducted as the property of both of them, from all your intercourse with them and from what you could observe.

(Objected to as leading.)

A. I knew it was conducted by both. Frank Metzger rented me a ranch, and I farmed it.

Q. After 1876?

A. Yes, sir; the ranch at Agua Negra.

Q. How did they treat the property; as being joint property of the two or of one of them?

(Objected to by defendant's counsel on the ground that it calls for the conclusion of witness.)

A. They treated it as the joint property of the two.

Q. State whether or not you had a good deal of conversation and business with them after 1876.

A. I did have business with them. I had conversations with them about that ranch.

Q. Did you frequently meet them and talk to them?

A. Pretty near once every week I saw them.

Q. Were you intimate with both Frank Metzger and Henry Korte, and did you see them frequently?

A. Yes.

Q. Often talk to them?

A. Yes, sir.

Q. Did you often talk to them about their business?

A. What business?

Q. Generally in conversation would they often speak about their business to you?

A. Yes, sir; they did.

Q. Where did you see them? Where would you meet them?

A. Right there at the store.

177 Q. You frequently visited the store and saw them there?

A. Yes.

Q. Who was generally in charge of the store?

A. The old man.

Q. Who do you mean by the old man?

A. Frank Metzger.

Q. You talked to both of them at the store?

A. Yes; sometimes alone. Sometimes Henry was there; sometimes Henry was out at the cattle ranch or was at Buena Vista;

sometimes I did not see Henry for fourteen days, where I would see Frank every week.

Q. Do you know by what firm name that business was carried on after 1876?

A. I don't know what the firm name was; if it was Henry Korte or Frank Metzger.

Q. You don't know what name they did their business in?

A. No, sir.

Q. But they did business together, did they?

(Objected to by Mr. Pritchard as leading.)

(No answer.)

Q. From what you could see and ascertain from them?

A. It appeared to me it was the same business there.

Q. They were both doing business, were they?

A. I bought some goods there——

Q. They were both doing the business, were they?

(Objected to by defendant's counsel as leading.)

A. Yes, sir; I saw them doing the business both together.

Q. And both exercising control over the business, were they?

(Objected to as leading by defendant's counsel.)

A. Yes, sir.

Q. That is of the store, ranches and everything?

(Objected to by defendant's counsel as leading.)

A. Yes, sir.

Q. How did they treat each other—as partners, or as if one was the owner, in their talking about their business?

(Objected to by defendant's counsel as leading.)

A. Henry treated Frank more like a father.

Q. In talking about their business, how did they treat each other?

(Objected to by defendant's counsel as leading.)

A. I believe as partners.

Q. In all that business in speaking about it?

178 A. Yes, and more in this business which I had about that ranch which I rented from them.

Q. Well, in talking about the cattle and the ranches—in talking about them and giving orders about them—how did they treat that business? As being joint business or the business of one of them?

(Objected to as leading.)

A. It appeared to me that they treated it as partners.

Q. As if it belonged to both of them?

A. Yes, sir.

Q. Do you know anything about the number of cattle that was sold by Korte of your own knowledge or from what Korte told you, or as to the price he got for the cattle sold?

A. They sold them in different bunches. They sold before 1882,

and in 1884, I believe, was when they sold the last. Metzger told me when Henry Korte was present that he had sent him down to turn over the last cattle, and to turn over everything. He said he had the sales of the cattle now that he had made. I am not certain whether he said it was fifty thousand dollars or between fifty and sixty thousand dollars. I don't know which.

Q. Frank Metzger told you that in the presence of Henry Korte?

A. Yes, but I don't know how many cattle they sold, or how many they had or to whom the cattle belonged.

Q. He told you the cattle sales amounted to somewhere between fifty and sixty thousand dollars?

A. Yes, sir.

Q. Do you know whether any of them were sold prior to 1882?

A. I do not know.

Cross-examination by G. W. PRIT-HARD:

Q. The most of these business transactions you had with these parties were before 1873, were they not?

A. I bought goods of them at wholesale before 1873 when I had a store up there, but I had no transactions excepting since 1876, when I came back. I came from Colorado.

Q. Well, the most of your business transactions with them you say was before you went away.

A. Yes, sir, and afterwards.

Q. What business transactions did you have with them in 1876?

A. I bought goods of them in the store sometime-. I had a ranch I rented from them, and planted it on the "thirds."

Q. You know nothing about their business as between themselves, do you? The business transactions, sales and anything of that kind between themselves, do you?

A. Only what they told me.

179 Q. Who told you?

A. Frank Metzger.

Q. You know nothing about the name in which the property stood after 1873, do you?

A. No, sir.

Q. Do you know whether they were partners prior to 1873?

A. I believe they were.

Q. Do you know how long they had been partners prior to that time?

A. I don't know. Whenever Henry Korte was married I believe they were in partnership. I don't know the year he was married.

Q. You know they continued in partnership up to 1873?

A. That is what I believe, yes.

Q. Why do you believe that? How do you know that?

A. Of course I know nothing about their dissolving partnership, and I don't know anything about any transactions they had. I always seen them together in the store there.

Q. You heard each of them state from time to time that they were partners prior to 1873.

A. Yes, sir; when Henry Korte got married then I knew it. Metzger told me himself he had taken Henry into partnership.

Q. Equal partners in the concern?

A. I believe so.

Q. And you know that continued for a good many years, don't you?

A. Yes, sir.

Q. Probably from 1867 to 1873, didn't it?

A. I never heard anything of it until I came back from Colorado, until they had that quarrel there in Henry Green's grocery store. I never heard anything or knew anything before because I was not here.

Q. You understood up to 1873, as I understand you, that Henry Korte and Frank Metzger were partners in the store and in the property; the ranches and cattle.

A. That is what Frank told me when Henry Korte married his daughter—that he had taken Henry into partnership with him.

Q. Took him as a partner in everything?

A. I don't know whether they were equal partners or if he had a share of it, of course I did not see the agreement.

Q. That is what you understood, was it not?

A. Yes, that is what I understood.

Q. In everything, in ranches, cattle, merchandise and everything?

A. Yes, sir; in everything.

Q. You understand that continued up until 1873 anyway, didn't you?

180 A. I never heard that they had dissolved partnership until I heard that quarrel.

Q. You know that up to 1873 they both had considerable valuable property in that partnership, merchandise, ranches, and cattle?

A. Frank Metzger had. If Henry brought anything into the partnership, that I do not know.

Q. You don't know anything about that?

A. Yes, I know Frank Metzger told me once when they sold the cattle, he said there is a couple of thousand dollars belongs to Henry. He had some cattle also.

Q. That was after 1876 was it not?

Q. Yes, sir.

Q. Do you know what became of that money received for the cattle?

A. I asked him, What are you going to do with that money? I says, If you put it in the bank, the bank will break. He said, "I sent Henry to St. Louis to buy me a good ranch."

Q. That is what he said he did with the property?

A. That is what he said he was going to do.

Q. Do you know what he did with it?

A. No, I don't know if he bought that ranch or if he didn't buy it.

Q. Do you know whether he sent any of his money to California or not?

A. No, sir.

Q. Do you know whether he gave his relatives any money that came out here?

A. He said so.

Q. He told you he gave his relatives money?

A. Yes, sir.

Q. What relatives did he say he had given money to?

A. His two nephews.

Q. Did he say anything about what he did with any other money?

A. No, he bought a ranch for his brother in Harmon county, Missouri, but afterwards I understand he paid his soldier's warrant for the land.

Q. You don't know whether he paid anything else?

A. No, sir. Oh, yes, he paid money in Santa Fé, that I know of. That was a debt previous to the time Henry was married.

Q. He paid a debt there?

A. Yes, he lost that suit and had to pay some money.

Q. Did Frank Metzger owe anything in 1873?

A. I believe he owed nothing. I don't believe he owed anything.

Q. Didn't owe anybody?

A. I think not.

181 Q. He was free from debt at that time?

A. That is my belief. I never knew that he had paid anything or that he owed anything. He might have owed a small amount of money, but not much.

Redirect examination by Mr. CATRON:

Q. Do you know how much Frank Metzger paid his nephews?

A. No, sir, he told me nothing about it. He only said, "I gave them their share, what it would come to."

Q. Was it a large or a small amount?

A. I don't believe he gave them very much.

Q. Would it amount to a couple of thousand dollars apiece?

A. I believe he did not give them that much.

Recross-examination by Mr. PRITCHARD:

Q. You say, "you believe." How do you know about that?

A. Because he said he would not give one of them more than the other. I know he only paid that soldier warrant to his brother, his legal brother; he said that was his share, so I think he did not give much to them. But one of them now is Korte's son-in-law. I don't know how much he gave them. I know Frank Metzger paid a judgment in 1863 and then he paid it afterwards.

Q. That is what he claimed?

A. The first time I know he paid it. I was sheriff of Mora county.

(Signed) WILLIAM GANDERT.

2625

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE. } Chancery. No. —.

Testimony Taken before W. E. Gortner, Examiner, at Mora, New Mexico, on Thursday, April 10th, 1890.

Present: Mr. T. B. Catron, solicitor for complainants, and Col. G. W. Pritchard, solicitor for the defendants.

JOHN D. W. VEEDER, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes and says, being examined by Mr. T. B. Catron, Esq.:

Q. State your name, age and occupation.
A. John D. W. Veeder, 37 years of age, attorney-at-law.
Q. Where do you practice law?
A. I practice in the Territory of New Mexico—in the district and supreme court of the Territory of New Mexico.
182 Q. How long have you been practicing law in the Territory of New Mexico?
A. Since the spring of 1882.
Q. Were you acquainted with Henry Korte in his lifetime?
A. I was.
Q. State if you were ever present in the probate court when Henry Korte was a witness before the court with reference to the matters pertaining to the estate of Frank Metzger.
A. I was.
Q. State the circumstances and what testimony was given, if you remember, by said Henry Korte on said occasion; give the whole statement of facts, how you happened to be there, how he happened to give the testimony and what it was?
A. Soon after the death of Frank Metzger I was employed by the complainants in this cause to represent their interests as heirs of Frank Metzger. Henry Korte made application for letters of administration upon the estate of Frank Metzger, and in the inventory that he made returned property to the amount of only about one hundred dollars. This was regarded at the time as being too small. It was regarded that there was very much more property than the amount of property that he had inventoried, and in order to determine that question, I, as attorney for the complainants, made application to the probate court of Mora county on behalf of these heirs, and asked the probate court to require Henry Korte to return a full and complete inventory of all the property. Henry Korte was summoned before the court upon that proceeding, in about the month of May, 1885, and he was put upon the stand as a witness to testify with regard to the property of Frank Metzger that he had found after his death. Upon that examination before the probate court of Mora county I asked him whether any copartnership had ever existed between himself and Frank Metzger, that is between Henry Korte and Frank Metzger. He said that there had been a copartnership. I then asked him whether that copartnership had ever

been dissolved, he said it had not. I then asked him further this question: If you were copartners at one time and this copartnership has never been dissolved as you say, then you were copartners at the time of Frank Metzger's death? He answered "Yes."

Cross-examination by Col. G. W. PRITCHARD:

Q. Mention the names of the parties who were present at that time?

A. Mr. Fernando Nolan was present. Henry Korte and whoever was probate judge of the county of Mora, say in 1885, and the clerk of the probate court. These are all the parties I recollect at present. These are all I recollect of now.

JOHN D. W. VEEDER.

183 FERNANDO NOLAN, being first duly sworn according to law, deposes and says, being examined by Thomas B. Catron, Esq.:

Q. State your name, age, residence and occupation.

A. Fernando Nolan, 55 years old. I reside at Wagon Mound. I am an attorney-at-law.

Q. Were you acquainted with Henry Korte in his lifetime?

A. Yes, sir.

Q. Were you ever in the probate court of the county of Mora when Henry Korte gave his testimony with reference to the estate of Frank Metzger, deceased?

A. Yes, sir; I was.

Q. State how it was that you happened to be there, and that he happened to be there, and what was the testimony that he gave on that occasion, and the occasion of his giving it.

A. I was at that time employed by the plaintiffs, by the heirs, or those that claimed to be the heirs of Frank Metzger, to represent them in court. Henry Korte had applied for letters of administration and I went there to represent the heirs. He turned in his inventory there, representing something like one hundred dollars, or a little over one hundred dollars, and he was called then to answer under oath to the question we wanted to ask him, and in answering, he was asked, either by Mr. Veeder, who was an attorney associated with me, or by me, if he was in partnership with Frank Metzger, and he answered that he was. He answered that he was for a certain length of time; since he got married with Metzger's daughter or something like that. In answer to the question if they had dissolved the partnership before that time he said "No."

Q. Before what time?

A. Before the time we were there.

Q. The time you were interrogating him?

A. Yes, sir; and he said no; I can't remember well what else he said.

Q. Was there anything asked him about whether he was a partner with Metzger at the time of Frank Metzger's death, if so, what answer did he give?

A. I am not certain whether he was asked that question—if he

was at the time of his death—but his answer was that they never dissolved the partnership in the previous question we put to him, "that the partnership was never dissolved."

Q. Do you remember anything else that was said?

A. He said at the time there that he had some settlements with the old man by which he came to be the sole owner of everything.

Q. Who do you mean—Korte?

A. Yes, sir; he denied that the old man had anything belonging to him of the property that was left after Metzger's death.

184 Q. He stated that his partnership with him had not been dissolved?

(Objected to by Colonel Pritchard, counsel for defendants, who asks that the question and the answer thereto be stricken out.)

A. I have stated that.

Q. The parties you represented at that time were the complainants in this cause?

A. Yes, sir.

Cross-examination by Col. G. W. PRITCHARD:

Q. You spoke about his testifying that there had been a settlement between old man Metzger and himself; did he say what that was?

A. He said that in this way: that the old man Metzger didn't own any of the property that he had; that he became the owner of it by some agreement with the old man.

Q. Did he indicate when that agreement was made?

A. No, sir.

Q. Do you remember whether the question was put to him directly as to asking him whether there had been a dissolution of the partnership?

A. The question was put to him if the partnership existed between him and Frank Metzger, and he said Yes all along, ever since I got married to his daughter. Then the question was put to him, "Have you ever dissolved partnership?" "No," he said.

Q. Did he say when the partnership was begun between them?

A. Since he married his daughter.

Q. Did he say in that conversation, Mr. Nolan, that the old man had no interest in the business at the time of his death?

A. He didn't say it except in that way.

Q. In what way?

A. He said all of the property was his property.

Q. How did he come to make that statement?

A. It was when we urged from him a true inventory that he said that he could not put the property into the inventory, because that was his property.

Q. Now, did he say anything about what the old man owned when he died?

A. No, sir; he said all he had was what he returned there—something over one hundred dollars.

Q. He said that is all the old man had when he died?

A. That is what he said.

Q. Did you ask him anything about when that settlement was that he spoke about with the old man?

A. No, sir.

185 Q. You did not?

A. No, sir; if we did I don't remember.

Q. And he made no statement as to when it was?

A. No, sir; he mentioned no dates about the settlement or anything of that kind.

Q. Did you ask him the date when his partnership began with the old man?

A. He voluntarily answered when the question was asked if a partnership existed, and he said, Yes. The question was put to him, "Since when was your partnership?" and he answered, "Since I married his daughter, Juanita."

Q. Did he give you the date when that partnership was begun?

A. No, sir.

Q. Did you ask him the date when that partnership began, or did Mr. Veeder or anybody else?

A. I don't think I asked him that question.

—. Did you ask him when he married the old man's daughter, Juanita?

A. I don't think I did. I don't think Henry could answer himself any of those questions.

Q. You didn't ask the question?

A. No, sir; not myself.

Q. Was the question asked him as to the date of his marriage?

A. I don't know; I am not certain.

Q. Did you ask him the length of time that his partnership existed with the old man?

A. Yes; we asked him how long was he in partnership, and he said he was in partnership with the old man. Then the question was put to him if that partnership was dissolved, and he said no.

Q. Did you ask him the date that the partnership ceased to exist?

A. No, sir.

Q. Did Mr. Veeder ask him that?

A. I don't remember well whether he did or not.

Q. Then, as I understand you, you didn't ask him when the partnership began?

A. Yes, sir; we did.

Q. You didn't ask him the date when the partnership began, or the date when it ceased to exist?

A. No, sir; we asked him the first question, how long he was in partnership, and his answer was, "Since I married Juanita."

Q. He said the partnership was since he married Juanita?

A. Yes, sir.

Q. Did he say how long he had married Juanita—how long since?

186 A. No, sir; I don't know whether he did or not. I don't think he knew himself.

Q. Was he not more definite than that?

A. That is as definite as he was.

Q. Why didn't you put to him these other questions as to the time the partnership began, and when it ceased to exist?

(Objected to by Mr. Catron, complainants' counsel.)

A. Probably I overlooked it myself.

Q. You didn't ask the question?

A. Well, I asked him several questions, but these questions that you ask me now probably I did ask him, but I cannot remember.

Q. Did Korte admit that he was a partner of Metzger at the date of Metzger's death?

A. He admitted that the partnership was never dissolved.

Q. Answer my question: Did Korte admit he was a partner of Metzger at the date of Metzger's death?

A. So I understood it myself, because he said he hadn't dissolved partnership; that is the way I understood it.

Q. You understood him that way?

A. Yes, sir.

Q. And at the same time he said that Frank Metzger had no property except the list that had been returned by Korte as administrator?

(Complainants' counsel objects to the question, and asks that it be stricken out.)

A. Yes, sir.

Q. Do you remember who was present when this testimony of Korte's was taken?

A. Yes, sir; Mr. Veeder was there, Henry Korte and the probate judge.

Q. Who was the probate judge?

A. I think it was Feliciano Guiterrez, but I don't remember now.

Q. Who else?

A. It seems to me that Juan Jose Gallegos was there, and it seems to me that Alelandro Branch was there helping him.

Q. You are also an attorney in this case are you not?

A. Yes, sir; I entered my appearance as attorney in this case, and also in the probate court, but they seem to have my name on the wrong side.

This was all the testimony taken on Thursday, April 10th, 1890, and an adjournment was taken to suit the convenience of counsel.

187 DOLORITAS MARTIN *et al.* } Chancery. No. —.
vs.
HENRY KORTE *et al.* }

Testimony Taken before the Examiner in the Above-entitled Cause on Saturday, April 12th, 1890.

Present: Col. G. W. Pritchard, solicitor for defendants, and T. B. Catron, solicitor for complainants.

Testimony Offered on the Part of Defendants.

Counsel for defendants offer in evidence five original deeds of Frank Metzger to Henry Korte, marked respectively, Exhibits A, B, C, D and E.

(Mr. CATRON: Counsel for complainant objects to the introduction of the deeds for the reason that no proper foundation has been laid for their introduction; the same have not been duly acknowledged and recorded as required by law, because they are impertinent, irrelevant and immaterial to the point at issue, each and every one of them. And upon the further ground that no copy of the same was filed with the defendant's answer.)

Col. G. W. PRITCHARD: The defendant also offers in evidence the original deed from Bernard O'Neil and Sonora Beaubien to Frank Metzger and Henry Korte, marked Exhibit F.

(Mr. CATRON: Counsel for complainants object to its introduction on the grounds stated above as to the introduction of the other deeds.)

CHARLIE KORTE, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, being examined by Col. G. W. Pritchard:

Q. What is your name and age?
A. Charlie Korte, age eighteen years.
Q. Where do you live?
A. Buena Vista, Mora county.
Q. What relation if any, were you to Henry Korte, deceased?
A. His son.
Q. What relation were you to Frank Metzger, deceased?
A. His grandson.
Q. Look at this book and state whether you have ever seen that book before?
A. Yes, sir; I have seen it.
Q. Where did you see that book first?
A. I seen it here in Mora when we lived here in Mora.
Q. In whose possession if anybody's, did you see the book?
A. In Henry Korte's possession, my father.
Q. How long have you known that book?
A. I have known it about five years, now.

188 Q. Do you recognize any of the handwriting in that book?
A. It is my father's handwriting, and in front here is where they used to be in company.

Q. Is there anybody's writing there besides your father's?
A. Yes, mine.
Q. What is that book?
A. This is the invoice book.
Q. Invoice of what?
A. What they bought, they put it down in the book.
Q. Is there any other handwriting in there besides your father's and yours that you recognize?
A. My grandfather's when they were in company, and of a clerk that they had.
Q. Where was this book kept, at what place?
A. It was kept with my father's papers.
Q. In what place, what town?
A. In the town of Mora and county of Mora.
Q. What business was your father engaged in at the time this book was kept?
A. In the merchandising business.
Mr. PRITCHARD: We now offer the book in evidence.

Mr. CATRON to witness:

Q. How long since your father has been merchandising?
A. I don't know how long.
Q. How long has it been since he quit merchandising?
A. When he died.
Q. When did he die?
A. He died at Buena Vista on the 5th day of January, 1889.
Q. Where was he merchandising at the time he died?
A. At Buena Vista he had a little store there at that time.

(Mr. Catron, counsel for complainants, objects to the introduction of the book in evidence, because no proper foundation has been laid for it, and because it is incompetent, irrelevant and immaterial to this cause as well as the contents thereof.)
(The book was here marked Exhibit "G.")
(Col. PRITCHARD: The defendant now offers in evidence the Las Vegas Gazette, date Saturday, June 14th, 1873, containing a notice of dissolution of the copartnership theretofore existing between Frank Metzger and Henry Korte, and asks that the same be marked Exhibit "H.")
(Mr. Catron, counsel for complainants, objects to the introduction of the paper in evidence on the ground that it is not the best evidence, no proper foundation has been laid for it, and as being irrelevant, impertinent and immaterial, and because no copy of same was ever filed with defendant's answer.)

189 Mr. PRITCHARD to witness: How long did you know Frank Metzger?
A. I knew him ever since I was about six or seven years old.
Q. State whether or not, you ever saw him write?
A. Yes, sir.
Q. State whether or not you ever saw him write his name?
A. Yes, sir, I have seen him write his name.

Q. State whether or not, you are familiar with his handwriting?
A. I can tell his handwriting.
Q. Look at this paper and look at this name and state whether you recognize that handwriting?
A. Yes, sir, it is his handwriting.
Q. What is his handwriting?
A. Frank Metzger.
Q. The name that is signed to that paper?
A. Yes, sir.

(Mr. CATRON: I object to the attorney for defendant examining proceeding further with this witness. I have called for an examination of the paper shown to the witness and it is declined to be shown to me. I object to further questions being asked the witness until it is shown to me.)
(Col. PRITCHARD: Defendant's attorney declines to exhibit the paper to counsel until it is offered in evidence.)

Col. PRITCHARD to witness: Whose signature is this in that paper?
A. My grandfather's.
Q. Give his name?
A. Frank Metzger.
Q. In whose handwriting is that signature?
A. In his own handwriting.

(G. W. PRITCHARD: We offer this paper in evidence.)
(The paper was here marked Exhibit "I.")
(Mr. Catron, counsel for complainants, objects to their introduction of the paper on the ground that it is impertinent, irrelevant and immaterial, and no proper foundation has ever been laid for its introduction and because no copy of the same was ever filed with defendant's answer.)

Col. PRITCHARD to witness: You say you are familiar with the handwriting of Frank Metzger?
A. Yes, sir.
Q. Look at this paper.

(Mr. CATRON: Counsel for plaintiffs before witness is handed the paper demands the right to look at it.)
(Col. PRITCHARD: Attorney for defendants agrees to deliver the paper to the counsel when it is offered in evidence, and
190 absolutely declines to exhibit it to counsel until it is offered in evidence.)
(Mr. CATRON: I object to the witness being asked any questions about the paper until it is shown me.)

Mr. PRITCHARD to witness: Whose signature is that to that paper?
A. Frank Metzger.
Q. In whose handwriting is that signature?
A. In his own handwriting.
Q. How do you know that it is in his own handwriting?

A. Because I have been in the same house where he lived and I have seen him write lots, and I have seen him write his name often.
Q. You have seen him write "lots," lots of what?
A. Lots of letters and papers like that.
Q. State whether or not you have seen him sign his name to many papers.

(Objected to by Mr. Catron as leading.)

A. Yes, sir.

G. W. PRITCHARD: Defendant now offers the paper in evidence and exhibits it to the gentleman on the other side for inspection before it is offered.
(Mr. CATRON: I object to its being offered in evidence as no proper foundation has been laid for its introduction, and as impertinent, irrelevant and im-aterial, and because no copy of same was filed with defendant's answer, and because the paper was refused to be shown to counsel before it was testified about.)
The paper was here marked Exhibit "J."

G. W. PRITCHARD to witness: Look at this paper and state whose signature is attached to that if anybody's.
A. Frank Metzger's.

(Mr. CATRON: I object to the counsel asking anything about the paper until it is exhibited to counsel for complainant- and I demand the right to see it.)
Mr. PRITCHARD: The attorney for defendants states that the paper will be exhibited to the gentleman on the other side before it is offered in evidence.
Mr. CATRON: I insist on seeing it before you ask a question about it.

Mr. PRITCHARD to witness: Whose signature is that?
A. Frank Metzger's.
Q. In whose handwriting is that signature?
A. His own handwriting.
Q. Do you know that to be his own handwriting?
A. Yes, sir.

191 Mr. PRITCHARD: Before offering the instrument in evidence, the same is exhibited to the attorney for complainant- for inspection.
Mr. CATRON: Counsel for complainants objects to the introduction of the paper, because no proper foundation has been laid for the introduction of the same, because it is impertinent, irrelevant and immaterial, and because defendant declined to exhibit the paper to complainant- before undertaking to introduce proof with reference to the same.
(The paper was here marked Exhibit "K.")

ANASTACIO TRUJILLO, being first duly sworn according to law, deposes and says (being examined by Colonel Pritchard):

Q. What is your name?
A. Anastacio Trujillo.
Q. Where do you live?
A. I live a mile above this town in the county of Mora.
Q. How long have you resided in that town?
A. It is more than forty-five years.
Q. State whether or not you knew Frank Metzger in his lifetime?
A. Yes, I knew him.
Q. How long did you know him?
A. I don't know how many years.
Q. More or less?
A. About twenty years.
Q. Did you know him in the year of 1873?
A. Yes, sir.
Q. Where did you know him at that time?
A. In this town of Mora.
Q. State whether or not you have ever seen the handwriting of Frank Metzger.
A. Yes, sir; I have seen it.
Q. State whether or not you are familiar with his handwriting, and were familiar with his handwriting.
A. I saw him sign many papers.
Q. State whether or not you saw him sign any papers in the year 1873?
A. Yes, sir.
Q. Do you remember any particular papers that he signed in your presence during that year?
A. Yes, sir.
Q. Mention any that you remember.

192 Mr. CATRON: I object to his mentioning any papers. The papers themselves are the best evidence. You cannot give character or contents of papers in that way.

A. He signed some papers conveying his property to Henry Korte.

Mr. CATRON: I object to the answer, and ask that it be stricken out, because the paper itself is the best evidence.

Q. Do you remember what month that was, or about what month that was when you saw him sign those papers?
A. No, sir.
Q. Look at this paper marked Exhibit "I," and state whether or not you were present when that paper was signed.
A. Yes, sir; I was present when that paper was signed.
Q. Who signed it?
A. Frank Metzger.
Q. State whether or not you are the same person whose name appears upon the paper as a witness?

A. I am the one, sir.
Q. State whether or not you signed your name to that paper as a witness?
A. I signed my name as a witness.
Q. State whether or not you signed your name as a witness at the time that paper was signed by Frank Metzger?
A. I signed this with my own hands.
Q. After or before Frank Metzger signed it?
A. After the paper had been signed by Frank Metzger.

(Mr. Pritchard, solicitor for the defendant, reoffers Exhibit "I" as evidence in this case.)
(Mr. Catron, counsel for complainants, objects to its introduction for the previous reasons stated.)

Mr. PRITCHARD to witness: Look at this paper marked Exhibit "J," and state whether you ever saw that paper before or not?
A. I have seen this paper before.
Q. Where have you seen it before?
A. Here in the town of Mora.
Q. Who signed that paper if you know?
A. Frank Metzger.
Q. How do you know he did?
A. Because I saw him do so.
Q. When was that? About when?
A. I think it was about 1873.
Q. What place was it that he signed the paper?
A. Here in the town of Mora.
Q. Were you present?
A. I was present.
193 Q. In what capacity were you present if any?
A. At that time I was secretary of the probate court.
Q. But this particular time when you were present?
A. I come there that time solicited to come as a witness.
Q. Who solicited you to come?
A. Frank Metzger.
Q. At whose request, if anybody's, did you sign that paper as a witness?
A. At the request of Frank Metzger, he was the one that asked me.

Mr. PRITCHARD: Solicitor for defendant offers again in evidence Exhibit "J."
(Counsel for complainants objects for the same reasons given previously when the paper was offered in evidence during the examination of Charles Korte.)

Q. Look at this paper marked Exhibit "K," and state whether or not you have ever seen that paper before.
A. Yes, sir; I have seen this paper before.
Q. Whose name is subscribed to that paper?
A. The name of Frank Metzger.
Q. In whose handwriting is that name?

A. In his own handwriting.

Q. State whether or not you were present when Frank Metzger signed his name to that paper.

A. I was present.

Q. At whose request were you present?

A. At the request of Frank Metzger.

Q. You signed the name of "Anastacio Trujillo" I see that name appears upon that paper as a witness, state whether or not you are the same person.

A. Yes sir; I am the person whose name appears on that paper.

Q. Who wrote that name as a witness?

A. I wrote it myself.

Q. At whose request, if anybody's?

A. At the request of Frank Metzger.

Q. Now state whether these three paper-, Exhibits "I," "J," and "K" were signed by Frank Metzger at the same time, or at different times.

A. At the same time.

Q. State whether or not you signed your name as a witness at the same time.

A. I did sign it at the same time.

Mr. PRITCHARD: Solicitor for defendants reoffers Exhibit "K" in evidence.

(Counsel for complainants objects to the introduction of the same for the same reasons in the previous objection in the previous offer.)

194 (Mr. PRITCHARD: I reoffer it after exhibiting it to the solicitor for complainant- for inspection.)

Q. Look at this paper and state whether or not you have ever seen it before, this paper marked Exhibit "L."

Mr. CATRON: Before the witness is asked any questions about the paper I ask that the paper be exhibited to the counsel for the complainants.

Mr. PRITCHARD: I will exhibit it before it is offered in evidence.

Mr. CATRON: I demand the right before you ask any questions about it, and I object to the examiner writing down anything before he exhibits it to me.

Mr. PRITCHARD: I decline to exhibit it to you until I have offered it in evidence.

A. Yes, sir; I have.

Q. State when you first saw that paper, if you remember when.

A. I saw that paper in 1872.

Q. Where did you first see it?

A. In my office.

Q. What position were you filling, if any, at that time?

A. I was clerk of the probate court.

Q. Is that the office you refer to where you first saw this paper?

A. Yes, sir.

Q. Now state the circumstances of your first seeing it. State how

you come to see it the first time, who brought it to you, if anybody, and all about it.

A. This paper was brought to the probate judge first as a petition, and after he had approved the petition then he handed it to me to enter into the records.

(Mr. CATRON: I object to anything the probate judge did, because the record is the best evidence of the fact.)

Q. State what you did with it when it came to you.

A. I recorded it.

(Mr. CATRON: I object to that as not being the best evidence.)

Q. State whether or not this is the original petition or paper that came to your possession.

A. Yes, this is the original paper.

Q. By whom is it signed?

A. It is signed by me, by Vicente Romero, and by Frederique Metzger.

Q. In what capacity did you sign it?

A. As clerk of the probate court.

Q. State whether or not you recognize the name of Frank Metzger on that paper.

A. No, sir; the name "Frederique Metzger" is signed.

195 Q. In whose handwriting is that paper signed?

A. My belief is that Frank Metzgar is the one who signed it.

(Objected to by complainants' counsel as not responsive to the question, as irrelevant and immaterial.)

Q. State whether or not that paper was registered in a book in your office.

(Objected to by complainants' counsel as not being the best evidence.)

A. Yes, sir.

Q. Are you acquainted with the signature of Vicente Romero?

A. Yes, sir.

Q. Were you familiar with the handwriting of Vicente Romero in his lifetime?

A. Yes, sir.

Q. State whose signature that is signed there as probate judge.

A. That is the signature of Vicente Romero.

Q. By whom was it written?

A. By himself.

Q. How do you know it was written by him?

A. Because I saw him sign it.

(Mr. Pritchard, solicitor for defendant-, after first exhibiting the paper to solicitor for complainants for inspection, offers the same in evidence and asks that the same be marked Exhibit "L" the same being the original paper.)

(Mr. CATRON: To the first part of the paper to which the name

Fredrique Metzger appears to be signed, I object to it as impertinent, irrelevant and immaterial, as being vague, uncertain, defective and in no manner conforming to the provisions and requisites of the law in such cases, and as wanting in many of the essential and legal requisites established and required by law for petitions in such cases. The following parts signed or purporting to be signed Vicente Romero, Jues de Pruebas, is objected to for the same reasons, and both parts are objected to because no foundation has been laid for their introduction and because the same is in no manner legal, competent and proper evidence.)

(Mr. PRITCHARD: This is all the testimony I have here today. I now give complainants' counsel notice that we will resume the taking of our testimony on Monday next.)

(Mr. CATRON: I shall object to any testimony being taken then and I demand notice to be given according to the rules.)

There being no further testimony offered, an adjournment was here taken.

In the District Court for the Fourth Judicial District, Sitting within and for the County of Mora, Territory of New Mexico, April Term, A. D. 1890.

196 DOLORITAS MARTIN *et al.* *vs.* HENRY KORTE *et al.* } Chancery. No.—.

Testimony Taken before the Master in the Above-entitled Cause on Monday, April 14th, 1890.

Present: Col. Pritchard for defendants and Fernando Nolan for complainants.

AGAPITO ABEYTA, being first duly sworn according to law, deposes as follows, being examined by Colonel Pritchard, defendants' attorney:

Q. State your name, age and residence.

A. Agapito Abeyta, age twenty-nine years, I live in Mora, Mora county, New Mexico.

Q. What is your occupation at this time?

A. County and probate clerk of Mora county.

Q. Who is custodian of the public records of this county?

A. I am at this time.

Q. Look at this book, labeled "The Probate Court from January, 1871, and Part of November, 1873," and see whether you recognize that book or not as one of the records of your office.

A. This is a book which has been there since I came into the office.

Q. State what is this book.

A. Proceedings of the probate court.

Q. Of what county?

A. Mora county.

Q. For what year?

A. From January, 1871, to November, 1873.

Q. Look on pages 111 and 112 of said book and state what, if anything, those pages contain.

A. This is a petition before the probate court by Frank Metzger, making a petition for Juana Metzger de Korte as his natural daughter, that is on pages 111 and 112.

Q. Are there any other writings on page 112?

A. Yes, signed by Vicente Romero, probate judge, and attested by Anastacio Trujillo, clerk.

(Solicitor for defendants introduces pages 111 and 112 of said book as evidence in this case, and it is agreed between attorneys for the respective parties hereto, that a certified copy of the instrument in writing testified to, may be used in evidence; that is pages 111 and 112, in lieu of the original book which cannot be removed from the files of the county clerk's office.)

Mr. PRITCHARD: It is further admitted by counsel for plaintiff and defendant that Frank Metzger paid no taxes on real estate in the county of Mora after the year 1873 up to the time of his
197 death, and that while Alejandro Branch was sheriff of said county during the years 1879 and 1880, he paid taxes on twelve thousand dollars in cash.

ALEJANDRO BRANCH, being first duly sworn according to law, deposes and says, being examined by Mr. G. W. Pritchard:

Q. State your name and residence.

A. Alejandro Branch. I live in Mora. I am 52 years old.

Q. State whether you knew Henry Korte in his lifetime.

A. I knew him.

Q. State whether or not you acted for him as his attorney in the probate court at any time when he was the administrator of the estate of Frank Metzger.

A. Yes, sir.

Q. State whether or not you were present during a proceeding in that court, and if so, in what capacity.

A. As his attorney.

Q. State whether or not you ever heard Mr. Korte make the statement that the partnership that had existed between Frank Metzger and himself had not been dissolved.

(Objected to by complainants' counsel.)

A. I don't recollect very well. All I recollect Henry Korte always claimed everything belonged to him.

Q. Now at any time when you were present in the probate court, as Henry Korte's attorney, state whether or not Korte said, in words or substance, that there had been no dissolution of the partnership.

A. I never heard him say so, that is to my knowledge.

Q. State whether or not you heard what he did say when he was on the witness stand and was interrogated by Mr. Nolan and Veeder.

A. The best I can recollect Korte said he had bought the interest of Frank Metzger.

Q. Were you present when Nolan and Veeder were present as attorneys on the other side?

A. Yes, sir.

Q. Were you present during the time that Korte was on the stand?

A. Yes, sir.

Q. Now that was in Mora county?

A. Yes, sir.

Q. And what time?

A. I don't recollect for certain.

Q. That was soon after the death of Frank Metzger?

A. Yes, sir.

Q. Was Frank Metzger called by any other name than Frederique Metzger?

A. Not that I knew of before they came into court.

198 Q. What was he generally called here in the community?

A. Francisco Metzger.

Q. Then is it a fact that Frederique and Francisco Metzger are one and the same persons?

A. Yes, sir.

Cross-examination by FERNANDO NOLAN:

Q. You say you were acting as attorney for Henry Korte, do you say you were present when Mr. Veeder and myself were present?

A. Yes, I was there during the time that Henry Korte was examined.

Q. Did you say that you didn't hear him answer my questions there?

A. I didn't say that.

Q. Do you remember that I put a question to Korte, if he was ever in partnership with Frank Metzger?

A. I don't recollect whether you or Mr. Veeder asked the questions. I recollect that questions was asked.

Q. Do you remember that I asked him how long he was in partnership?

A. I don't recollect.

Q. Do you remember that I asked him whether that partnership was dissolved, and he said that there was no dissolution of the partnership?

A. I never heard it to the best of my knowledge. I don't know whether he answered that question or not.

Q. Do you remember I questioned him whether he was managing the business for Frank Metzger or not, and he said he was managing the business, that the old man had retired from the business, and he was the manager?

A. I don't recollect, I don't know if he answered such a question.

Mr. PRITCHARD to witness:

Q. How long did you know Frank Metzger and Henry Korte?

A. I knew Metzger about twenty years at least, and I knew Henry Korte for twelve or fifteen years.

Q. Now since the year 1873, what do you know, if anything, about who was the owner and the manager of the store here in Mora, as between those men?

A. I don't know anything about it.

Q. You were sheriff during a part of that time?

A. In 1879 and 1881 I was sheriff.

Q. Who paid the taxes on the real property here at that time?

A. During the time I was sheriff, Henry Korte.

Q. Were you intimately acquainted with Frank Metzger?

A. Yes, sir.

199 Q. Did you ever talk to him about the business, about who was running the business or managing the business?

A. No, sir.

Q. Who seemed to have charge of the business there?

A. It looked to me that Henry Korte had charge of it.

Mr. NOLAN to witness:

Q. You said you were acquainted with Frederick Metzger for twenty years?

A. About twenty years.

Q. Did he ever tell you, or do you know by any records, that he dissolved partnership with his son-in-law?

A. I don't know only what I heard. He never told me anything about it.

Q. Where was Frederick Metzger living at the time they were together?

A. In the town of Mora.

Q. Were they living in the same house?

A. Yes, sir.

Q. Was Frederick Metzger in charge of the business all the time here?

A. No; I saw the old man, Frank Metzger, some time in the store.

Q. Did Frederick Metzger pay any taxes on any property aside from the store?

A. I don't know that he paid for the store, or how he paid. He paid on $12,000.

Q. Was that in cash?

A. If I am not mistaken it was cash, or in personal property.

Q. Do you remember that the question was put to Henry Korte when he was testifying in the court-house if there was any articles of partnership between him and Frank Metzger?

A. I believe they asked him some question like that.

Q. Do you remember his answer?

A. I don't recollect his answer.

Q. You remember he was asked when did he go into partnership with Frank Metzger?

A. I don't recollect that.

Q. Do you remember he answered that he got into the partnership since he married Juanita?

A. I believe so. I don't remember of it sure, but I believe that was his answer.

Q. Do you remember of him saying that old Frank Metzger, his father-in-law, when he got sick and could not attend to business, he turned over everything to him, and that since that time he was running the business, and there was no dissolution of partnership?

A. I don't recollect that, but I recollect at one time there
200 when he was on the stand he said he bought everything that belonged to Frank Metzger. I recollect that very well.

JUAN JOSE GALLEGOS, being first duly sworn according to law, deposes and says (being examined by G. W. Pritch—, Esq., solicitor for the defendants):

Q. Where do you reside?

A. Here in Mora.

Q. How long have you been living in Mora?

A. Since 1853.

Q. Were you acquainted with Frank Metzger in this lifetime?

A. Yes, sir.

Q. Were you also acquainted with Henry Korte?

A. Yes, sir.

Q. Were you acquainted with these men in 1875?

A. Yes, sir.

Q. State whether or no you were present on or about June, 1873, in the town of Mora when there were some papers signed by Frank Metzger in your presence.

A. Yes, sir.

Q. State whether or not you signed any papers at that time as a witness?

A. Yes, sir.

Q. Look at this paper marked Exhibit "J" and see whether your name appears upon that paper as a witness.

A. Yes, sir; here it is.

Q. State what other name is on that paper as a witness.

A. Anastacio Trujillo.

Q. State what other name besides those two witnesses is on that paper.

A. Frank Metzger's or Francisco Metzger's.

Q. State whether or not you saw Frank Metzger sign his name to that paper.

A. Yes, sir.

(Solicitor for defendant here again introduces said Exhibit "J" as evidence in this case.)

Q. Please look at this paper marked Exhibit "I," and state whether or not you were present when that paper was signed.

A. Yes, sir.

Q. Where was that?

A. Here in that house there where Don Francisco was living.
Q. In the town of Mora?
A. Yes, sir.
Q. State whether or not you saw Frank Metzger sign his name to that paper.
201 A. Yes, sir.
Q. State whether or not your name is upon that paper as a witness.
A. Yes, sir; that is my name.

(Solicitor for defendants here again offers in evidence Exhibit "I.")

Q. Please look at this paper marked Exhibit "K," and state whether or not you have ever seen that paper before, and, if so, when you first saw it.
A. Yes, I saw it before at the house of Francisco Metzger.
Q. At the time you saw the others?
A. Yes, sir; at the same time we witnessed several papers that Frank Metzger signed.
Q. State whether or not you were present when this name, Frank Metzger, was signed to this paper.
A. Yes, sir.
Q. In what capacity were you there at that time?
A. Frank Metzger sent for me so I could be a witness to his signature to these papers.
Q. State whether or not your name appears on that paper you hold in your hand marked Exhibit "K" as a witness.
A. Yes, sir; it is there.
Q. State what other name is upon that paper as a witness.
A. Anastasio Trujillo and Frank Metzger.
Q. Frank Metzger as what?
A. Frank Metzger as principal. We were sitting around a table and when Frank Metzger signed the paper he passed it to us to sign as a witness.
Q. State whether or not you saw Anastacio Trujillo sign his name.
A. Yes, sir.
Q. Who signed your name, yourself?
A. Yes, sir.
Q. Do I understand you that all these papers, Exhibits "I," "J" and "K," were signed by Frank Metzger as principal and by you and Anastacio Trujillo as witnesses at the same time?
A. Yes, sir.
Q. Do you remember about when that was; what year?
A. I don't remember exactly but it was some time in 1880. It may have been before that.
Q. These papers are dated the 10th day of June, 1873?
A. That may be so, I don't remember the year.
Q. Now state whether or not at the time these papers were signed by Frank Metzger and by you and Trujillo, there was any money

that changed hands with anybody at that time, and all about it and state all the facts.

202 A. Yes, sir. As soon as we got through signing the papers Frank Metzger got hold of the papers in his hand and spoke to Henry Korte who was standing by the side of the table, and said to him, "Henry, here are your papers, hand me my money." There was a little room adjoining the room where we were, and as soon as Frank Metzger addressed Henry Korte as I have stated before, Henry Korte went into that adjoining room and brought out a box that looked like a box that had hats in it, and he brought in the box and emptied the contents of the box on the table and the contents was paper money, in bundles, and each bundle had a piece of white paper around it giving the amount of money that there was in each bundle.

Q. What became of that money?

A. They themselves began to look over the figures on the bundles. After they looked over the numbers and figures, Metzger told Henry to take that money and put it back in the box. Then Henry took back the money to the place where he got it from. I don't know what he did with it. When that was done though Henry came out, and then Metzger told Henry, you have a bottle of white wine opened, and then Metzger addressed me and said, "We have a custom that whenever we make a trade we drink wine if it is good, and if it is bad we drink also."

Q. How long had you known Frank Metzger prior to this time?

A. I had known him since 1850, I knew him in Las Vegas for the first time.

Q. State when you first knew Henry Korte.

A. When he married his wife.

Q. Do you remember the year that was?

A. No, sir.

Q. Who did Henry Korte marry?

A. With a woman that Frank Metzger called his daughter?

Q. Was she known as Frank Metzger's daughter?

A. He told me so himself.

Q. Now do you know whether Frank Metzger and Henry Korte did business together as partners or otherwise after Henry Korte married Frank Metzger's daughter?

A. I don't know.

Q. Do you know whether they were merchandising together or not?

A. All I know is that one time Frank Metzger went to Europe, Henry remained in the store. Another time Henry Korte went to Europe and Frank Metzger shut up the store and didn't sell any goods.

Q. Was that before or after 1873?

A. After 1873.

Q. Who left after 1873; Frank Metzger or Henry Korte?

A. Henry Korte.

203 Q. After the year 1873 were you acquainted with Henry Korte?

A. Yes, sir.
Q. Who seemed to have the management of the business after 1873, Henry Korte or Frank Metzger?
A. Henry Korte.

Solicitor for defendants also again offers in evidence Exhibit "K."

Cross-examination by FERNANDO NOLAN:

Q. You stated that you signed these papers as a witness?
A. Yes, sir.
Q. Is that your handwriting?
A. Yes, sir.
Q. You say that you saw Frank Metzger sign that paper (Ex "K")?
A. Yes, sir.
Q. Were you present when the papers were made?
A. Yes, sir.
Q. Tell me what that paper is?
A. I do not know what the paper contains; all I know is I am sure I signed that paper myself—there is my signature.
Q. You didn't know what you were signing then?
A. I did not know the contents of the paper, but Don Francisco let us know what his object was for calling us in there.
Q. Can you tell one from the other of these papers?
A. They are English and I don't know the difference.
Q. Whose handwriting is that paper in?
A. I don't know; I don't know who wrote it.
Q. When you signed this you took Frank Metzger's word when you signed this?
A. Yes, sir.
Q. You didn't know what they were except what he told you?
A. No, sir.
Q. Did you see Anastacio Trujillo sign that paper (Exhibit "J")?
A. Yes, sir.
Q. And Frank Metzger also?
A. Yes, sir.
Q. After you took Frank Metzger's word as to what was in these papers you signed them?
A. Yes, sir.
Q. And you also were ignorant of what they were?
A. I knew what he told us they contained.
Q. You say you were acquainted with Frank Metzger since 1850?
A. Yes, sir.
204 Q. Were you friendly with him up to his death?
A. From 1853 up to his death I was friendly with him.
Q. Did you and he have friendly conversations?
A. Yes, sir; many times.

Redirect examination by Col. G. W. PRITCHARD:

Q. You say you were intimate with Frank Metzger?
A. Yes, sir; very intimate.

Q. State whether or not Frank Metzger ever said anything to you about whether he was in business with Henry Korte after the year 1873.

A. At the time that Henry Korte went to Europe, a great many people used to come to buy goods there at the store. He refused to sell them; some requested him to sell them goods, and he answered, I don't want to attend to any more business; this business belongs to Henry, and I am too old to attend to any more business; besides he says, I only have one daughter and don't need to work any more, or to go into any other business.

Q. What position do you hold at this time, if any?

A. I am justice of the peace of precinct No. 1, Mora county, New Mexico.

An adjournment was here taken until Saturday, April 19th, 1890, to meet in Las Vegas, where the defendant's counsel stated he desired to take some more evidence on the part of the defense.

TERRITORY OF NEW MEXICO, } ss:
County of San Miguel, }

I, William E. Gortner, official stenographer of the fourth judicial district court of the Territory of New Mexico, and examiner appointed by an order of the said court in the above-entitled cause, do hereby certify that the above is a true and correct copy of the testimony presented before me in said cause as the same was taken down and written out by me.

— hand this 29th day of May, A. D. 1890.

W. E. GORTNER, *Examiner.*

Las Vegas, N. M., May 29th, 1890.

In the District Court of the Territory of New Mexico in and for the County of Mora.

DOLORITAS MARTIN *et al.*
vs.
JOSEFITA MARTIN DE CORDOBA *et al.* } Chancery. No. 906.

Testimony Taken in the Above-entitled Case before John H. Koogler, Special Master, This 19th Day of November, 1889.

Present: T. B. Catron and J. D. W. Veeder, Esq., for complainants, and G. W. Pritchard, Esq., for defendants.

205 Complainants introduce in evidence the certified copy of the record of a deed from Frank Metzger to Henry Korte, dated the 9th day of June, 1873, the certificate of its being a true copy dated the 17th day of March, 1885, which is marked for identification Exhibit 200.

Also certified copy of the record of a deed by Frank Metzger to Henry Korte, dated the 9th day of June, A. D. 1873, the certificate as to its being a true copy being dated the 17th of March, 1885, and which is marked Exhibit No. 201.

Also a certified copy of the record of a deed executed by Frank Metzger in favor of Henry Korte, dated the 9th day of June, 1873; the certificate of its being a true copy dated March 17th, 1885, and marked Exhibit No. 202.

Also a certified copy of the record of a deed executed by Frank Metzger in favor of Henry Korte, dated June 9th, 1873; the certificate of its being a true copy dated March 17th, 1885, and marked Exhibit No. 203.

Also a certified copy of the record of a deed executed by Frank Metzger in favor of Henry Korte, dated June 9th, 1873; the certificate of its being a true copy dated March 17th, 1885, and marked Exhibit No. 204.

(Counsel for the defendant object to the introduction of the foregoing certified copies of deeds because the absence of the original deeds is not accounted for, nor is it shown that the complainants are unable to procure them.)

EXHIBIT D AND 200.

This indenture, made this ninth day of June in the year of our Lord one thousand eight hundred and seventy-three, between Frank Metzger, of Mora, county of Mora, Territory of New Mexico, of the first part, and Henry Korte, of the said town of Mora, county and Territory aforesaid, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of three thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, granted, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth bargain grant, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the tracts of land, property and farm known as the Frank Metzger's Cevolla ranch, lying and being situated on both sides of the Cevolla river, in the county of Mora and Territory of New Mexico, and bounded as follows, to wit: On the north by the
206 foot of the hill, on the south by another hill or mountain, on the other side of the said Cevolla river; on the east by the ranch now belonging to the said Henry Korte, and formerly known as the Metzgar and Pinard ranch, of Buena Vista, and also bounded by the lands of one Jose Ygnacio Martin, and on the west by the mountains; together with all the houses, outhouses, dwelling-houses, stables and improvements, whatsoever, and all and singular the tenements, hereditaments and appurtenances thereunto belonging *to* or in anywise appertaining, and also the estate, rights, title, interest, property, possession, claim and demand whatsoever both in law and in equity of the said party of the first part, of in and to the above-granted premises, and every part and parcel thereof, with the appurtenances.

To have and to hold the above mentioned and described premises with the appurtenances and every part thereof to the said party of the second part, his heirs and assigns forever. And I, the said

Frank Metzger, for myself, my heirs, executors and administrators, do covenant with the said Henry Korte, his heirs and assigns, that I will, and my heirs, executors and administrators, shall warrant and defend the said premises to the said Henry Korte, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

FRANK METZGER. [SEAL.]

Signed, sealed and delivered in presence of—
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Before me, the undersigned, clerk of the probate court for and in the said county of Mora, on this 10th day of June, 1873, personally came Frank Metzger, personally known to me to be the person executing the foregoing deed of conveyance, and he acknowledged that he executed the same voluntarily and for the purposes therein mentioned.

Witness my hand and the seal of said probate court, the day and year last above written.

[SEAL.] ANASTACIO TRUJILLO, *Clerk.*

Recorded in Book 2, Records of Mora County, pages 396–97, on the 13th day of June, A. D. 1873.

EXHIBIT B AND 201.

Know all men by these presents: that I, Frank Metzger, of the county of Mora, in the Territory of New Mexico, for and in
207 consideration of the sum of one hundred and fifty dollars, to me paid by Henry Korte, of said county and Territory, the receipt of said sum of money is hereby acknowledged, do hereby convey, remise, release and forever quitclaim unto the said Henry Korte, his heirs and assigns, all that tract and parcel of land one hundred yards wide, situated on the Agua Negra river, near the town of Agua Negra, in the county of Mora and Territory of New Mexico, and bounded as follows, to wit: On the north by lands of Jose Maria Olibas; on the south by lands of Juan Gabriel Gonzales; on the east by the Agua Negra river, and on the west by the mountains of the lagunas, together with the appurtenances and privileges thereunto belonging.

To have and to hold the above-granted and released premises unto the said Henry Korte, his heirs and assigns and to his and their use and behoof forever.

In witness whereof, I have hereunto set my hand and seal this 9th day of June, 1873.

FRANK METZGER. [SEAL.]

Signed, sealed and delivered in presence of—
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Before me, the undersigned, clerk of the probate court for and in said county of Mora, on this 10th day of June, A. D. 1873, personally came Frank Metzger, personally known to me to be the person executing the foregoing deed of conveyance, and he acknowledged that he executed the same voluntarily and for the purposes therein mentioned.

Witness my hand and the seal of said court, the day and year last above written.

[SEAL.] ANASTACIO TRUJILLO, *Clerk.*

(Endorsed.)

Esta para certificar que la presente Escritura fue en registrada segun todos sus vezes en el libra segunda de Registros del Condado de Mora, en paginas 400, 401.

En este dia 13 de Junio, 1873.

[SEAL.] ANASTACIO TRUJILLO,
Escb. de la Corte de Pbas. y Tiene por Oficina Registrador.

EXHIBIT A AND 202.

Know all men by these presents, that I, Frank Metzger, of the county of Mora in the Territory of New Mexico, for and in
208 consideration of the sum of eight hundred dollars to me in hand paid by Henry Korte, of the said county of Mora in the aforesaid Territory, the receipt of said sum of money is hereby acknowledged, do hereby convey, remise, release and forever quitclaim unto the said Henry Korte, his heirs and assigns, one undivided half part of the hereunder mentioned and described real estate, houses, lots of ground and tracts and parcels of land, the said Henry Korte being the owner of the other undivided half part. Said property, real estate, houses, etc., above mentioned and conveyed being situate in the town of Mora, county of Mora, and Territory of New Mexico and better described as follows, to wit:

One house and lot of ground thereto belonging, lying in the said town of Mora and bounded as follows, to wit: On the north by an arrollita on the north side of the dwelling-house upon the real estate or land; on the west by the lands and houses formerly belonging to Juanita Alire and Cristobal Cordoba, on the south by the Camino Rael; on the east four varas from said dwelling-house to the lands and property of Rafael Garcia. This being the same property which the said Frank Metzger and Henry Korte purchased and bought of one Leonore Beaubien and N. F. O'Neil, with all the privileges and appurtenances thereunto belonging.

Also one piece and parcel of ground or land lying and being situate near said town of Mora as aforesaid, and bounded as follows, to wit: On the north by the mountains; on the south the river and lands of the estate of Ceran St. Vrain, deceased; on east by lands of said St. Vrain estate; on the west by lands of Matias Martin; said

tract of land being one hundred yards wide; and also the houses, outhouses, dwelling-houses and improvements which are on said tract of land, together with the appurtenances and privileges thereunto belonging. This being the same property which the said Frank Metzger and Henry Korte bought at sheriff's sale of Dolores Romero then sheriff of said Mora county, on the 2nd day of April, 1868, and said property then known as "Bill Mansford's property."

To have and to hold the above-released premises, that is to say, the one undivided half interest conveyed as aforesaid, to the said Henry Korte, his heirs and assigns, and to his and their use and behoof forever.

In witness whereof, I have hereunto set my hand and seal this 9th day of June, A. D. 1873.

FRANK METZGER. [SEAL.]

Signed, sealed and delivered in presence of—
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Before me the undersigned, clerk of the probate court in
209 and for the county of Mora, on this 10th day of June, A. D. 1873, personally came Frank Metzger, personally known to me to be the person executing the within instrument, and acknowledged that he executed the same voluntarily and for the uses and purposes therein mentioned.

Witness my hand and the seal of said court the day and year last above written.

[SEAL.] ANASTACIO TRUJILLO, *Clerk.*

(Endorsed.)

Esto es para certificar que el presente instrumente fue en registrada segun todas sus vozes en el Libro Segundo de Registros del Condado de Mora, en pages 398, 399, 400.

En este dia, 13 de Junio, 1873.

[SEAL.] ANASTACIO TRUJILLO,
Escribano de la Corte de Pruebas y Tiene por Oficio Registrador.

EXHIBIT C AND 203.

This indenture, made this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-three, between Frank Metzger, of Mora, county of Mora, and Territory of New Mexico, of the first part and Henry Korte, of the said town of Mora, county and Territory aforesaid, of the second part:

Witnesseth, that the said party of the first part in consideration of the sum of seven thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, granted, sold, aliened, remised, released, con-

veyed and confirmed, and by these presents doth bargain, grant, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the tracts of land, property and farm known as the "Frank Metzger" or also the "Pinard ranch," lying and being situate at Buena Vista, county of Mora and Territory of New Mexico, on the Mora river and bounded as follows, to wit:

On the north by the said Mora river; on the south by the summit of the mountains; on the east by the junction of the Mora and Cebolla rivers; on the west by the summit of the mountains between Buena Vista and Golondrinas (this being the same tract of land which the said Frank Metzger purchased and bought of J. Francisco Pinard) together with all the houses, outhouses, dwelling-houses, stables and improvements whatsoever, and all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also the estate,
210 right, title, interest, property, possession, claim and demand whatsoever both in law and in equity of the said party of the first part, of, in and to the above-granted premises and every part and parcel thereof, with the appurtenances.

To have and to hold, the above mentioned and described premises, with the appurtenances and every part thereof to the said party of the second part, his heirs and assigns forever.

And I, the said Frank Metzger, for myself, my heirs, executors, and administrators, do covenant with the said Henry Korte, his heirs and assigns, that I will, and my heirs, executors and administrators shall warrant and defend the said premises to the said Henry Korte, his heirs and assigns forever, against the lawful claims and demands of any person or persons.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

FRANK METZGER. [SEAL.]

Signed, sealed and delivered in the presence of—

JUAN JOSE GALLEGOS,
ANASTACIO TRUJILLO.

TERRITORY OF NEW MEXICO, }
County of Mora, } *ss:*

Before me the undersigned, clerk of the probate court, in and for Mora county on this 10th day of June, 1873, personally came Frank Metzger, personally known to me to be the party executing the foregoing instrument, and he acknowledged that he executed the same voluntarily and for the purposes therein set forth.

Witness my hand and the seal of said court the day and year last above written.

[SEAL.] ANASTACIO TRUJILLO, *Clerk.*

Recorded on the 13th day of June, 1873, in office of the probate clerk for Mora county.

EXHIBIT E AND 204.

This indenture, made this ninth day of June in the year of our Lord one thousand eight hundred and seventy-three, between Frank Metzger of Mora, county of Mora, Territory of New Mexico, of the first part, and Henry Korte, and Juana Maria Korte de Metzger, husband and wife, of the said town of Mora, county and Territory aforesaid of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of two thousand dollars to him in hand paid by the said parties of the second part, the receipt whereof is hereby
211 acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part and to their heirs and assigns forever, all that property, real estate, houses, lots, stables, corrals, and improvements whatsoever, lying and being situate in the town of Mora, county of Mora and Territory of New Mexico, and generally known as "the property of Frank Metzger" and bounded as follows:

On the north by property belonging to the estate of Theodore Mignault, on the west by property belonging to Vicente St. Vrain, on the south by a street leading to the church, on the east by the main street of the town of Mora, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of, in and to the above-granted premises and every part and parcel thereof with the appurtenances.

To have and to hold the above mentioned and described premises with the appurtenances and every part thereof, to the said parties of the second part, their heirs and assigns forever. And I the said Frank Metzger, for myself, my heirs, executors and administrators do covenant with the said parties of the second part, their heirs and assigns, that I will, and my heirs, executors and administrators shall warrant and defend the said premises, to the said parties of the second part, their heirs and assigns forever, against the lawful claims of all persons.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

FRANK METZGER. [SEAL.]

Signed, sealed, and delivered in presence of—

JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

TERRITORY OF NEW MEXICO, } ss:
County of Mora, }

Before me, the undersigned, clerk of probate court, for and in said Mora county on this 10th day of June, 1873, personally came Frank Metzger, personally known to me to be the person executing the foregoing deed of conveyance, and acknowledged that he executed the same voluntarily and for the purposes therein mentioned.

Witness my hand and the seal of said probate court the day and year last above written.

[SEAL.] ANASTACIO TRUJILLO, *Clerk.*

Recorded in Book 2, Records of Mora County, pages 401, 402, on the 13th day of June, 1873.

212 EXHIBIT F.

Know all men by these presents, that we, Bernard O'Neal and Leonor Beaubien, his wife, of the county of Rio Las Animas, and Territory of Colorado, for and in consideration of nineteen hundred and seventy dollars to us in hand paid by Frank Metzger and Henry Korte of the county of Mora and Territory of New Mexico, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said Frank Metzger and Henry Korte and to their heirs and assigns forever, all the real estate following, to wit: A certain house and lot of ground lying and being situate in the town of Santa Gertrudes de Mora, county of Mora, in the Territory of New Mexico, bounded as follows, to wit: On the north by an arellita on the north side of the dwelling-house upon the real estate or land; on the west by the lands of Quinta Alire and Cristobal Cordoba; on the south by the Camino Real; on the east four varas from the said dwelling-house to the land of Rafael Garcia, together with the tenements, hereditaments and improvements thereunto belonging, and all the rights, title, interest, claim and demand whatever of the said Bernard O'Neal and Leonora Beaubien, his wife, in and to the above-described premises.

To have and to hold the premises herein described, together with all the appurtenances, unto the said Frank Metzger and Henry Korte, their heirs and assigns forever, and we the said Bernard O'Neal and Leonora Beaubien, his wife, for ourselves, executors and administrators, do covenant and agree to and with the said Frank Metzger and Henry Korte their heirs and assigns, that they have not done, committed or suffered any act or acts, thing or things whatever whereby the above-described premises, now or at any time hereafter shall or may be impeached, charged or encumbered; and we, the said Bernard O'Neal and Leonora Beaubien, his wife, for ourselves, executors and administrators, do covenant, grant and agree, that the said premises are now free from all incumbrances of any kind or nature whatever; and that we will, and our heirs, executors and administrators shall warrant and defend the same to the said Frank Metzger and Henry Korte, their heirs and assigns forever, against all persons whatsoever.

In testimony whereof we have hereunto set our hands and seals this — day of ——, A. D. 1868.

LEONORA BEAUBIEN. [SEAL.]
B. J. O'NEAL. [SEAL.]

Executed and delivered in presence of—
JAMES KINKHEAD.
WILLIAM REINKEN.

213 TERRITORY OF NEW MEXICO, } ss:
County of Rio Los Animas, }

On this 18th day of March, A. D. 1868, personally appeared before me the undersigned, Geo. S. Simpson, county clerk of the said county, Bernard O'Neal and Leonora Beaubien, his wife, and acknowledged the foregoing deed of conveyance to be their act and deed, for the purpose therein contained, and the said Leonora Beaubien being by me examined separate and apart acknowledged that she executed the same as her own free act and deed, and without fear or compulsion of her said husband.

In witness whereof I hereunto set my hand and seal this 18th day of March, 1868.

[SEAL.] GEO. S. SIMPSON,
County Clerk.

($2.00 rev. stamps.)

EXHIBIT H.

(Published in the Las Vegas Gazette of Saturday, June 14th, 1873.)

Notice

Is hereby given that the copartnership heretofore existing between the undersigned, under the name, firm and style of "Metzger & Korte," has this day been dissolved by mutual consent, Frank Metzger retiring from business.

FRANK METZGER.
HENRY KORTE.

Mora, N. M., June 9th 1873.

EXHIBIT I.

Bill of Sale of Store.

For and in consideration of the sum of two thousand five hundred dollars, to me in hand paid in full satisfaction, by Henry Korte, my former partner, I hereby transfer and sell to him all my interest in the goods, wares and merchandise of our late business at Mora, New Mexico, my said interest being one undivided half part in said business.

Witness my hand this 10th day of June, A. D. 1873.

FRANK METZGER.

Witnesses:
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

EXHIBIT J.

Received, Mora, N. M., June 11th, 1873, of Henry Korte, the sum of eighteen thousand three hundred and thirty dollars in
214 money and two thousand three hundred dollars in book accounts, in full satisfaction for real estate contained in five deeds (said deeds dated June 10th, 1873), also for personal property contained in a bill of sale (dated the 10th day of June, 1873), containing agreement of partido wagons and cattle and one bill of sale for merchandise.

FRANK METZGER.

Witnesses:
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

EXHIBIT K.

Know all men by these presents: that I, Frank Metzger, of the town of Mora, county of Mora, Territory of New Mexico, in consideration of the sum of five thousand one hundred and eighty dollars, to me in hand paid by Henry Korte, of the said town of Mora, the receipt whereof I do hereby acknowledge, have bargained, sold, granted and conveyed, and by these presents, do bargain, sell, grant and convey unto the said Henry Korte, all my right, title and interest in and to the following-described personal property, the numbers opposite the different items being the corresponding amount of payment:

Agreement of partida of Santiago Ribali for 15 cows.....	$220
" " " " Patricio Trujillo for 25 cows.....	375
" " " " Candelario Bustus for 17 cows.....	255
" " " " Francisco Romero for 27 cows.....	270
" " " " Salvador Ribera for 10 cows.....	100
" " " " Claudio A. Gallegos for 30 cows....	450
" " " " Reyes Leyba for 40 cows.....	400
" " " " Ramon Gonzales for 15 cows.....	160
" " " " Felipe Trujillo for 31 cows.....	310
" " " " Pedro Pino for 16 cows.....	160
" " " " Casmirio Valdez for 30 cows.....	300
" " " " B. Anto. Romero for 40 cows.....	400

One hundred and twenty-three head of cattle big and small for amount of $1,230.00, they having my brand thus : one undivided half interest in eleven wagons for the amount of $550.

To have and to hold the same unto the said Henry Korte, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal the 10th day of June, A. D. 1873.

FRANK METZGER. [SEAL.]

Signed, sealed and delivered in presence of—
JUAN JOSE GALLEGOS.
ANASTACIO TRUJILLO.

215 EXHIBIT L.

(Translation from the Spanish.)

TERRITORY OF NEW MEXICO, }
County of Mora. }

Hon. Vicente Romero, probate judge in and for said county.

HONORABLE SIR: Very respectfully I appear before your honor and make my declaration, affirming that I recognize and consider Juana Metzger, wife of Henry Korte, residents of said county of Mora, and daughter of Apolonia Guiterrez, deceased, as my natural and only absolute and universal heir of my property, which I possess, and whom I declare, that by this, my declaration, submitted to your honorable court, she, the said Juana Metzger, wife of Henry Korte, deceased, may enjoy the right, privileges and prerogatives of a daughter of mine, recognized as such by me, the undersigned, for her benefit at all times during my life and after my death, and I desire also that this be filed and remain of record on the records of the probate court of the aforesaid county of Mora.

I declare further, that however, I am commonly known by the inhabitants of this county of Mora and throughout other places by the name of "Don Francisco Metzger," but my real and proper name is "Frederick Metzger," as I subscribe my name on this declaration, this 6th day of May, 1872.

FREDERICK METZGER.

I, Vicente Romero, probate judge in and for the county of Mora, Territory of New Mexico, do certify that he who subscribed his name to the foregoing declaration, under the name of Frederick Metzger, is well known to me by the name of "Frederico Metzger," and that the declaration that he has given has been of his own free will and of his sound mind, and that he signed the same, signing his name, with his own hand, in Mora, this 6th day of May, of 1872.

VICENTE ROMERO,
Probate Judge.

By the probate judge:
ANASTACIO TRUJILLO, *Clerk.*

EXHIBIT "M."

Know all men by these presents, that we, Viviana Martin, resident of La Cebolia, county of Mora, Territory of New Mexico, and Ramon Bonne, Andres and Eleanor, wife of Andres, Laumbach, sons and daughters, who are of age, of the said Viviana Martin, and Maria Marta, Doloritas, Josefita and Abelita, minor daughters of the said Viviana Martin, and represented by their mother,
216 the said Viviana Martin, as natural guardian for said minors, all residents of the county of Mora, in the Territory of New

Mexico, for and in consideration of the sum of three thousand dollars ($3,000), to us in hand paid by Francisco Metzger, resident of the plaza of Mora, county of Mora, Territory of New Mexico, the receipt of which is hereby acknowledged, by these presents we have released, discharged and forever exonerated, and by these presents we do release, discharge and forever exonerate, for ourselves, our heirs, administrators and executors, from any action or demand, debt or debts, thing or cause, of any nature whatever; and principally upon any claim against our mother, the deceased Polonia Guiterres, be it on account of inheritance or any other thing, cause or reason; and also against any claims for personal services of whatever nature, done by the said Viviana Martin or her daughters or sons at any time heretofore, now, and in time gone by; and furthermore, we release, discharge and forever exonerate the said Francisco Metzger, his heirs, administrators and executors, against any claim, demand, action, debt or debts, things and causes in law or equity, and be it of whatever nature it may, be it existing heretofore, now, or in the future; and these presents are made, executed and signed with the purpose and principal object that they may serve as a receipt to the said Francisco Metzger, his heirs, administrators and executors of every and all of the reasons and considerations herein mentioned.

In testimony of which we have placed our hands and seals this 19th day of March, A. D. 1875.

her
VIVIANA x MARTIN. [SEAL.]
mark.

his
RAMON x BONNE. [SEAL.]
mark.

her
ELEANOR x LAUMBACH. [SEAL.]
mark.

her
ANDRES x EBERLE. [SEAL.]
mark.

MARIA MARTA,
DOLORITAS,
JOSEFITA,
ISABELITA,

By their mother and natural guardian,

her
VIVIANA x MARTIN. [SEAL.]
mark.

217 Attested and witnessed by—

his
JESUS MA. x GALLEGOS.
mark.

his
FELIPE x GALLEGOS.
mark.

FRANCISCO GALLEGOS.

Report of Special Master.

In the District Court of the Territory of New Mexico in and for the County of Mora.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE. } No. 906.

The undersigned, John H. Koogler, heretofore appointed special master in the above-entitled cause to report the proofs with his findings of facts and conclusions of law thereon, respectfully represents:

That a part of the testimony in said cause was taken before A. B. Sager, as examiner; a part before W. E. Gortner as examiner, and still another part by myself; and that all the proofs thus taken have been submitted to me for consideration and are herewith returned as a part of this my report.

I have been attended by T. B. Catron, Esq., and J. D. W. Veeder, Esq., solicitors for complainants, and G. W. Pritchard, Esq., solicitor for defendants. Upon the pleadings and the testimony, I find as matters of fact:

1st. That Frederick Metzger, sometimes called Frank Metzger and Francisco Metzger, died intestate, in Mora, Mora county, New Mexico, in the month of February, 1885. He was an old resident of the county, having engaged in business in the town of Mora as early as the year 1849. He was an active business man, engaged in mercantile business, buying, selling and raising stock, taking Government contracts for furnishing supplies, ranching, etc., and had accumulated and been the owner during his lifetime of a considerable amount of property real and personal.

2nd. Frederick or Frank Metzger had never married during his life, but had lived or cohabited with at least two women, natives of the Territory, at different times, and with each one for a number of years. At one period of his life he had cohabited with a woman by the name Apolonia Guiterres, who at that time and during the time of the cohabitation with Metzger, was a married woman,
218 the wife of Bernardo Martin. By this woman, Appolonia Guiterres, Metzger had a daughter, Juanita, or Juana, called Juana Metzger. He also lived and cohabited with Vivian Martin, for a period of about seventeen years, until about 1875, and was the father of her three daughters, Doloritas, Josefita and Isabelita, complainants in this suit. The woman, Viviana, at the time of the birth of these children, the complainants, was an unmarried woman, and remained single all her life.

3rd. Henry Korte, one of the defendants in this suit, in about the year 1866, married Juana Metzger, the daughter of Frank, by the woman Apolonia, and about the same time he entered into partnership with Frank Metzger, in all branches of his business, mercantile, cattle-raising and farming. He was a young man, active in getting money and close in keeping it. Previous to his marriage

with Juana he had property and money to the amount of about $7,000. By investing with Metzger about three thousand dollars and five thousand more given to his wife by Metzger, he became a half owner in the merchandise then carried by Metzger and estimated at a value of $16,000. He thus became an equal partner in the business with Metzger.

4th. Metzger resided with his son-in-law Korte, in Mora, a part of the time, and a part of the time at Cebolla ranch with the woman Viviana Martin, where he had provided a home for her and her children, alternating between the two places in about equal portions of the time. The firm of Metzger & Korte had but little faith in banks, or rather depositories under human control, and whatever money which was accumulated by them, and which was probably considerable, was kept in the house or hid away.

5th. On the 6th day of May, 1872, Frank Metzger executed a declaration which he filed in the office of the probate clerk of Mora, purporting to recognize Juana Metzger, wife of Henry Korte, defendant, as a natural daughter, and purporting to declare her sole, absolute and universal heir of the goods which he possessed.

6th. On the 10th day of June, 1873, the firm of Metzger & Korte dissolved formally, the dissolution notice as published declaring the firm dissolved and that Metzger had retired from the partnership. Deeds of conveyance of the interest of Metzger in all the lands claimed by himself, or by the partnership, were duly executed to Korte; and bills of sale of his share in the stock of merchandise and the cattle were likewise made to Korte. The whole consideration for this property as stated in the deeds and bills of sale amounted to $18,630. On the same date, June 10th, 1873, Metzger executed to Korte a receipt for the sum of $18,330, acknowledging the payment of that amount, in money and book accounts,
219 for the real estate and personal property contained in the five deeds and bill of sale. The whole transaction seems to have been attended by acts of considerable formality. The deeds, bill of sale and receipt were executed in the presence of two witnesses, Juan Jose Gallegos and Anastacio Trujillo, who were called in especially to attest the transaction. Metzger took the documents in his hands and said to Korte, "Henry, here are your papers, hand me my money!" Whereupon Korte went into an adjoining room and brought out a box with a bundle of paper money, with white paper strips around each bundle, endorsed with the amount on each bundle. After they had looked over the figures, Metzger told Korte to take the money and put it back in a box and the latter took it back where he got it from. The whole transaction was celebrated by opening a bottle of white wine.

7th. One of the witnesses, A. Morrison, testifies to having had a conversation with Metzger in 1873, after this purported dissolution, in which the latter explained this transaction to him, that he had made over his property to Henry Korte in order to save himself from a promissory note, amounting to about eight or nine thousand dollars, which he had once paid, and which was sought to be collected from him again unjustly, but that he would not give up his

business, but would retain it in the property and remain a silent partner in the business, which would be carried on in the name of Henry Korte. According to the testimony of a good many witnesses whose means of knowledge were considerable, the business seems to have been conducted about the same after this purported dissolution, as it was before. Louis Kahn, an old and near neighbor testified that Metzger took an active interest in the business up to the time of his death, gave directions about what should be done, and seemed to control it as much after 1873 as before. Manuel Esquibel who worked for them, testified that they both employed him, said the business belonged to them both, and that both paid him for his services. When he quit work for them in 1880, he turned over to them some 4,087 head of cattle. These cattle were all sold previous to Metzger's death, some two thousand of them having been sold in 1881. Fernando Nolan and J. D. W. Veeder testified that Korte had admitted when giving testimony in the probate court that he had never dissolved partnership with Metzger until the old man died, and that he was managing the business for both. This, however, was denied by Alexander Branch, a witness for the defendant. William Gandert testified that Metzger claimed to own the property after 1873 as before. The answer of the defendant accounts for the purported dissolution in 1873 on the grounds that Metzger at that time was contemplating a trip to Europe. There was also some evidence offered to support the allegation that the firm was fully dissolved, but the great weight of the testimony seems to be to the effect that Metzger in reality
220 retained his interest in the business after this purported dissolution, that in reality he was still a partner with Korte, and that seemed to be the general belief among their neighbors and friends and people with whom they dealt, gathered from the manner in which they acted towards each other, their admissions and conversations in each other's presence, and the manner in which they dealt with the world. The theory that Korte had not in reality paid anything to Metzger at the time of the execution of the deeds heretofore mentioned, seems to be likewise supported by the testimony of J. H. Mink, who says that in 1873 or 1874, in talking with Metzger about this sale, the latter said that Korte still owed him ten or twelve thousand dollars.

7th. Metzger paid no taxes on real estate, in his name after the year 1873, in the county of Mora until his death, and during the years 1879 and 1880, he paid taxes on twelve thousand dollars in cash.

8th. Frank Metzger died in 1885, and Henry Korte as his administrator, made a return of property as belonging to the estate, of $182.00, consisting mostly of personal apparel of a total value of $59.00, a watch valued at $125 and $8.00 in money.

9th. Henry Korte died in 1888, in the latter part of the year, and William Naeglin, his son-in-law, was appointed administrator of his estate. He made a return of personal property belonging to such estate of a total value of $600.00, consisting principally of domestic animals, farming implements, tools and some merchandise.

10th. The real estate which was purported to be conveyed by Frank Metzger to Henry Korte in the transaction of June 10th, 1873, and which was still in the name of Henry Korte at the time of his death in 1888, consisted of the tracts following:

The Pinard ranch or Buena Vista ranch. This ranch had a lake on it, and between 500 and 1,000 fruit trees. The witnesses differed widely as to its extent and value. Rafael Romero estimated the total extent at 3,000 acres, including hills and pastures, 300 acres under cultivation, and three or four miles of ditching. He estimated the value of the ranch at thirty thousand dollars. William Naeglin, on the other hand, said there *was* about ninety acres under ditch, and that the ranch did not include more than 250 acres, hills and all. He placed the value at seven thousand dollars. Gandert said it was worth fifteen to twenty thousand dollars in 1873, and was worth forty thousand dollars now. Sebollo ranch; R. Romero estimated its value now at two thousand five hundred dollars. William Naeglin placed it at three thousand dollars, and Gandert its worth in 1873 at six thousand dollars.

House and lot in Mora used as a store, estimated by Romero to be worth five thousand dollars, and by William Naeglin at two thousand dollars. Gandert fixes its value in 1873 at five thousand dollars.

221 Leonora Beaubien property situated in Mora, old house and lot estimated by R. Romero at a value of two thousand dollars. William Bransford property, farming land near Mora, estimated by Romero to be worth one thousand five hundred dollars. Land in Agua Negra valued at five hundred dollars.

10th. On March the 19th, 1875, Frank Metzger made a settlement, or provision for the support of herself and children, with Vivian Martin, the mother of complainants, by which he gave to her property and money to the value of three thousand dollars, and took her receipt for the same. The property and money consisted of cattle, a mortgage for five hundred dollars, and five hundred dollars in cash. The receipt was signed by Vivian and also by her as guardian of her minor children, complainants; and purported to release him from personal services of whatever nature, rendered by said Vivian Martin and her children.

From the pleadings and evidence submitted my conclusions in the case are as follows:

1st. That the complainants are the natural daughters of Frank Metzger by Vivian Martin, and are properly heirs to any estate left by him at his death; both their father and mother being single at the time they were born, and no impediment to their marriage.

2nd. That the wife of Henry Korte, Juana Guitterrez, was likewise a daughter of Frank Metzger by her mother Apolonia Guiterrez, and although the latter was a married woman at the time of the birth of her daughter, yet I am of the opinion that the written declaration made by Metzger before the probate clerk had the effect, even under the civil law, of constituting her an heir to Metzger's estate, but not the sole and universal heir.

3rd. The question as to the amount of property, real and personal,

left by Frank Metzger at his death is the troublesome one. The evidence does not seem so conclusive on either side as to remove all misgivings. But let us trace up events. It is certain that for some time during his life Frank Metzger was the possessor of considerable property. His opportunities were good in the early days of New Mexico, and he had the capital and capacity to improve them. He was an economical, close and secretive man; and what people knew of his possessions beyond lands, merchandise and visible property, was merely speculative and not actual. He had lived and done business at the town of Mora since 1849; and was reputed to be wealthy. In 1866, Henry Korte, a young and active man became acquainted with and married Juana Metzger, a daughter of Frank Metzger by Apolonia Guitterrez. Korte has been characterized by one of the witnesses as an extremely "close-fisted man who never spent a cent more than he was compelled to spend." He was grasping and avaricious. He became a partner in business
222 with Metzger, investing some three thousand dollars of his own money and property and some five thousand dollars more which he says Metzger gave to his wife; thus making an investment of $8,000. This partnership of Metzger and Korte existed until June 9th, 1873, when it was dissolved, or at least a purported notice of dissolution was published in the Las Vegas Gazette. Metzger also made deeds purporting to transfer all his real estate to Korte; also his interest in the mercantile business, and cattle, by bills of sale. All of these instruments were written out carefully and executed before witnesses with a degree of formality and publicity unusual with these close-tongued, secretive and cautious partners, and which never before or afterwards characterized their dealings with each other. The unusual character of the transaction is to my mind a suspicious circumstance. The deed to two tracts of land, viz., the tract bought of Leonore Beaubien, and the tract known as the "Bill Bradford" tract, specified that Metzger sold his undivided half interest therein to Korte, and that the other half interest already belonged to Korte. The deeds to the other tracts mentioned in the findings of facts were to all the tracts of land, as if up to that time Metzger was the sole owner of them. The firm had sufficient capital to operate with and was out of debt. The partners were close-fisted, grasping men. Neither had spendthrift habits and they ought and probably did accumulate money. Why this transaction was had, Metzger transferring all his property, giving notice of dissolution and retiring from the firm, is not sufficiently explained by the pleadings or the evidence. There must have been some other reason, that Metzger was trying to avoid the payment of an unjust claim, or that he was contemplating a trip to Europe, which he did not take. After this transaction he exercised about as much activity in the business and about as much control and management of the property until his death, as he did before. If there was any change in his conduct, it was not noticeable by his friends. The payment of money made by Korte to Metzger at the time the deeds were executed smacks of a pretended or play payment. Another transaction had about a year previous to this dis-

solution whereby Metzger made a declaration attempting to constitute the wife of Korte his sole and universal heir and thus to exclude these complainants and cut them off from any participation in any property he might leave at his death does not look right for a man endowed with natural affection for his offspring and unfortunate offspring at that. These two circumstances were likewise followed by another unnatural and unusual one—in March, 1875, when a settlement was had between Vivian Martin and Frank Metzger, whereby Metzger paid to Vivian some two thousand dollars' worth of cattle for personal services, and Vivian signed a release on
223 behalf of her minor children, these complainants. Metzger seemed then to have some property left for that purpose, though it is claimed he had sold it all two years before to Korte. If Korte had had an undue influence over Metzger and was scheming to secure the disinheritance of these children of Metzger he would likely have gone at it in about this way. Metzger lived with Korte, and the latter seemed to possess his full confidence.

This firm must have made money and must have kept it or hid it. They had no use for banks or other depositories known to any one but themselves. In about 1880, Manuel Esquibel, as mayordomo, turned over to them some 4,087 head of cattle. These cattle were all disposed of previous to Metzger's death and a large amount of money must have been realized from their sale. What has been done with it, is a question which no witness has yet answered. Korte, as administrator of the estate of Metzger, says, Metzger did not have it, and inventories no more property as belonging to him than many a tramp can rightly claim. Naeglin, as administrator of the estate of Korte, swears that he did not find over $80.00 in cash belonging to him, and the personal property returned amounted in value to $600. The reputed wealth of this firm of peculiar men seems to have vanished from sight, as from the hand of a conjurer, and it is left solely to conjecture and speculation that a fortune in golden pieces lies hid away in the bosom of mother earth, where a lucky accident will one day reveal it to some person more needy and perhaps just as worthy of it as either Metzger or Korte. The visible property remaining consists of ranches and houses, more or less fallen into decay, and delapidated. What ought to be the judgment of a court of equity and good conscience in such a case?

That Metzger voluntarily set about devising ways and means to disinherit and cut off from any share in his property these complainants, his helpless daughters, with a dark shadow already thrown across their lives, is beyond credence and unworthy of belief. If Henry Korte connived at it and sought to further it by machinations, he ought not to be permitted to enjoy the fruits of such a wrong.

The master concludes, that considering all the circumstances of the case, in connection with the presumptions that may be reasonably indulged and the misgivings and mysteries attending it, the visible property should be equally divided between the two parties to this suit, the complainants and the heirs and representatives of Henry Korte; that is the complainants, Doloritas, Josefita and

Isabelita Martin, should be each decreed to have an undivided sixth interest in the following ranches:

The Pinard, or Buena Vista ranch, the Sebolla ranch, the houses and lots in Mora; and also in the following property, in case
224 Henry Korte had not disposed of it previous to his death, to innocent purchasers, the Leonore Beaubien property, the William Brandford property, and the land in Agua Negra; and that the other undivided half of such property should be decreed to belong to the heirs of Henry Korte and wife.

The witnesses differ so widely upon both the value and extent of these houses and lands that I do not see how any other form of decree can be rendered in the case without taking further testimony on these points.

May 1st, 1891.

All of which is respectfully submitted.

JOHN H. KOOGLER,
Special Master.

And afterwards, to wit: on May 5th, 1891, there *was* filed in said clerk's office exceptions to master's report, in words and figures as follows, to wit:

District Court, Mora County, at Chambers.

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE *et al.*

Now come the defendants herein, by their solicitor, G. W. Pritchard, and except to the findings and conclusions of the master herein, and particularly except to the conclusion of said master that the complainants are the natural daughters of Frank Metzger, deceased; also to his conclusion that the said Juana Korte was not the sole and universal heir of the said Frank Metzger; also to his findings and conclusions that Henry Korte was not the owner of all the property involved in this suit at the death of the said Metzger; also to his findings and conclusions that the sale of the real estate and partnership business by said Metzger to Henry Korte was not a *bona fide* sale; also to his findings and conclusions that the said Metzger did not have the right to make such sale, or that there was any found therein.

G. W. PRITCHARD,
Solicitor for Defendants.

And afterwards, to wit: on Tuesday, October 20th, 1891, the same being the second day of the regular October term of the district court held within and for the county of Mora, the following among other proceedings were had, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*
vs.
HENRY KORTE *et al.*
} Chancery. No. 906.

It is ordered by the court that the hearing on the exceptions to the master's report be, and the same is hereby, set for some time during the first week of court, at Las Vegas, N. M., at the next November term, 1891.

225 And afterwards, to wit, on the 15th day of December, A. D. 1892, there was filed in said clerk's office a final decree in said cause in words and figures as follows, to wit:

District Court, Fourth Judicial District, Territory of New Mexico, County of Mora.

DOLORITAS MARTIN *et al.*
vs.
HENRY KORTE *et al.*
} Chancery. No. 906.

Final Decree.

This cause coming on to be heard this the — day of September, A. D. 1892, upon the exceptions heretofore filed by the defendants' solicitor to the master's report herein, and said exceptions, together with the report of said master, and the pleadings and proofs having been read to the court, and argument of the solicitors of the respective parties having been heard, and the court being fully and sufficiently advised in the premises, doth sustain the exceptions of the defendants to the report of the said master, and the said report is hereby set aside, in so far as said master finds that the complainants are entitled to any of the property referred to in their said bill. And the court further finds, upon the pleadings and proofs herein, that the complainants are not entitled to the relief prayed for by them, or to any relief in the premises.

It is therefore ordered, adjudged and decreed by the court, that the said complainants take nothing by reason of their said bill, but that the same be, and is hereby dismissed, with costs to be paid by the said complainants, and that the defendants and each of them go hence without day.

And it is further ordered, adjudged and decreed by the court, that the master herein be allowed for his services, and he is hereby allowed the sum of —— dollars, to be paid by the complainants, and that execution issue for said costs and for the sum herein allowed as master's fee.

Dated at Las Vegas, N. M., this 14th day of December, A. D. 1892.

JAMES O'BRIEN,
Chief Justice, etc.

And afterwards, to wit: on the 11th day of September, A. D. 1893, there was filed in said clerk's office an application for appeal

and order of court granting the same, in words and figures as follows, to wit:

In the District Court of the Fourth Judicial District, Mora County.
In Vacation.

226 DOLORITAS MARTIN *et al.* vs. HENRY KORTE *et al.* } No. 906. Chancery.

This cause coming on to be heard on this 11th day of September, A. D. 1893, upon the application of the complainants for leave to take an appeal from the judgment and decree of the district court of San Miguel county dismissing their bill of complaint to the supreme court of the Territory of New Mexico—

It is therefore ordered by the court that the complainants be allowed to take an appeal from said decree and judgment of the district court of San Miguel county to the supreme court of the Territory of New Mexico, and the bond of such appeal is hereby fixed by the court at the sum of five hundred dollars, to be approved by this court.

JAMES O'BRIEN,
Chief Justice, etc.

And afterwards, to wit: on November 22nd, 1893, there was filed in said clerk's office an appeal bond approved by the court, in words and figures as follows, to wit:

In the District Court of the Fourth Judicial District, Mora County.

DOLORITAS MARTIN DE CORDOBA *et als.* vs. HENRY KORTE *et als.* } No. 906.

Know all men by these presents, that we, Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josefita Martin de Duran, Jose Manuel Duran, Isabelita Martin and Viviana Martin, as principals, and Thomas B. Catron, and John D. W. Veeder, as their securities, are held and firmly bound unto Annie Naeglin, as administratrix, with the will annexed of Henry Korte, deceased, Annie Naeglin, William Naeglin, Charles Korte, Frank Korte, and Edward Korte, in the sum of five hundred dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, our executors and administrators firmly by these presents.

Sealed with our seals and dated this 7th day of October, A. D. 1893.

The condition of the above obligation is such that whereas, in a certain proceeding in the district court of the county of Mora, being cause No. 906, and entitled Doloritas Martin de Cordoba *et al.*, vs. Henry Korte *et al.*, wherein the said Doloritas Martin de Cordoba

and Jose Manuel Cordoba, her husband, Josefita Martin de
227 Duran, and Jose Manuel Duran, her husband, Isabelita Martin, an infant by Viviana Martin, her mother and next friend, were complainants; and Annie Naeglin, as administratrix with the will annexed of Henry Korte, deceased, Annie Naeglin and William Naeglin, her husband, Charles Korte, Frank Korte, William Korte, were defendants, said proceeding being brought for the purpose of establishing the rights of the said complainants to share in the estate of one Frank Metzger, deceased, and,

Whereas, upon the hearing of said cause in the district court of Mora county, the judge of said court did on the 14th day of December, A. D. 1892, make and render a final decision in said cause, adjudging that the said complainants take nothing by their said bill, and that the same be dismissed, and that the complainants pay the costs of suit, and that defendants go hence without day, and,

Whereas, the said complainants consider themselves aggrieved by the said judgment, decision and decree of the court in said cause, and have applied for and have obtained an allowance of an appeal from the said judgment, decision and decree of the said district court to the supreme court of the Territory of New Mexico, and the appeal bond was upon the allowance of such appeal fixed by the court in the sum of five hundred dollars:

Now, therefore, the condition of the above obligation is such, that if the said principals and appellants, shall prosecute their said appeal with due diligence in the supreme court, and in case the judgment, decision and decree appealed from be affirmed, or the appeal be dismissed, shall perform the decree and judgment of the district court, and pay all damages and costs adjudged against them, in the supreme court, upon appeal, then this obligation to be null and void, otherwise to remain in full force and effect.

DOLORITAS MARTIN DE CORDOBA, [SEAL.]
(By JOHN D. W. VEEDER, *Att'y.*)
JOSE MANUEL CORDOBA, [SEAL.]
(By JOHN D. W. VEEDER, *Att'y.*)
JOSEFITA MARTIN DE DURAN, [SEAL.]
(By JOHN D. W. VEEDER, *Att'y.*)
JOSE MANUEL DURAN, [SEAL.]
(By JOHN D. W. VEEDER, *Att'y.*)
ISABELITA MARTIN, [SEAL.]
(By JOHN D. W. VEEDER.)
VIVIANA MARTIN, [SEAL.]
(By JOHN D. W. VEEDER, *Att'y.*)
JOHN D. W. VEEDER. [SEAL.]
T. B. CARTON. [SEAL.]

228 TERRITORY OF NEW MEXICO, }
County of San Miguel. }

Be it remembered that on this 9th day of October, A. D. 1893, before me, the undersigned, a notary public, in and for the county of San Miguel in the Territory aforesaid, personally came Thomas B.

Catron and John D. W. Veeder, to me well and personally known to be the same persons whose names are subscribed to the foregoing bond, and as sureties thereto, and severally acknowledged that they signed, sealed and executed the same as their free and voluntary act for the uses and purposes therein set forth. And the said Thomas B. Catron, and John D. W. Veeder, being each by me severally sworn did upon their oath state that they were each worth the sum of ten thousand dollars over and above all just debts and liabilities, and property by law exempt from execution.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] JOHN H. TEITLEBAUM,
Notary Public.

The foregoing bond approved by me both as to amount and to sufficiency of sureties this 21st day of October, A. D. 1893.

THOMAS SMITH,
Chief Justice, etc.

And afterwards, to wit, on the 11th day of December, A. D. 1893, there was issued out of said clerk's office a citation and two copies, in words and figures as follows, to wit:

In the District Court of the Fourth Judicial District, Mora County.

DOLORITAS MARTIN *et als.*
vs.
HENRY KORTE *et als.*
} In Chancery.

To George W. Pritchard, Esq., and Louis Sulzbacher, Esq., solicitors of record for the defendants in the above-entitled cause:

You and each of you are hereby notified that the complainants in the above-entitled cause have taken an appeal from the judgment and decision of the district court of Mora county, in said cause, to the supreme court of the Territory of New Mexico; and you are hereby notified to appear in the supreme court of the Territory of New Mexico on the first day of the next term thereof, to be begun and held in the city of Santa Fé, New Mexico, on the last Monday of July, A. D. 1894, then and there to answer this appeal and show cause, if any there be, why the said judgment should not be reversed, annul-ed and altogether held for nothing, and why speedy
229 justice should not thereupon be done between the parties in that behalf.

Witness the Honorable Thomas Smith, chief justice of
[SEAL.] the supreme court of the Territory of New Mexico, and *ex officio* judge of said district court, and the seal of said court, this 11th day of December, A. D. 1893.

FELIX MARTINEZ, *Clerk.*

And afterwards on the 21st day of December, 1893, said citation was returned into said clerk's office and filed therein with the following endorsement of service thereon:

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

John D. W. Veeder, being duly sworn, upon his oath declares and says, that he served the within notice and citation upon Louis Sulzbacher, one of the attorneys of record for the defendants in said cause at Las Vegas, New Mexico, on the 20th day of December, A. D. 1893, by then and there delivering to the said Louis Sulzbacher personally a true copy of the said notice and citation.

JOHN D. W. VEEDER.

Subscribed and sworn to before me the undersigned, a notary public, this 20th day of December, A. D. 1893.

[SEAL.] JOHN H. TEITLEBAUM,
Notary Public.

TERRITORY OF NEW MEXICO, } *ss:*
County of San Miguel, }

I, Felix Martinez, clerk of the fourth judicial district court for the Territory of New Mexico, sitting in and for the county of Mora, do hereby certify that the above and foregoing contains a true and perfect transcript of the record, proceedings and papers in the cause No. 906, lately pending in said court, wherein Doloritas Martin de Cordoba, *et al.*, were complainants and Henry Korte, *et al.*, were defendants, as the same remain of record and on file in my office.

Witness my hand and seal of said court, this 17th day of July A. D. 1894.

[SEAL.] FELIX MARTINEZ, *Clerk.*

230 Be it remembered that at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday of July, A. D. 1894, the same being Monday, July thirtieth, eighteen hundred and ninety-four, and on the twentieth day of said term, the same being Thursday, the 23rd day of August, A. D. 1894, the following, among other, proceedings were had, to wit:

231 DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees. } No. 582. Appeal from District Court of San Miguel County.

On motion of said appellants, by their solicitor, T. B. Catron, Esq., it is ordered by the court that this cause be, and the same hereby is, set for hearing at the foot of the calendar, August 24th.

232 Be it remembered that afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday in July, A. D. 1895, the same being Monday, the twenty-ninth day of July, A. D. 1895, and on the

eighth day of the said term, the same being Tuesday, the sixth day of August, A. D. 1895, the following, among other, proceedings were had, to wit:

233 DOLORITAS MARTIN DE CORDOVA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees. } No. 582. Appeal from San Miguel County.

This cause, coming on for hearing upon the transcript of record, assignment of errors, and briefs of counsel on file, is argued by Messrs. Catron and Veeder for said appellants and Messrs. Long and Fort for said appellees and submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

234 And afterwards, to wit, on the twenty-fourth day of August, 1895, there was filed in the office of the clerk of the said supreme court an opinion; which opinion is in the words and figures as following, to wit:

235 In the Supreme Court of the Territory of New Mexico, at the July Term, 1895.

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees. } No. —. Appeal from District Court, San Miguel County.

Opinion.

This is a suit in chancery brought by Doloritas Martin de Cordoba and others as the natural heirs of Frederick Metzger against Henry Korte. After the issue *were* made up Henry Korte died, and the cause was revived against his heirs and representatives.

The bill, briefly stated, avers that Metzger, in Mora county, in 1885, — possessed of a large real and personal estate, consisting of merchandise, cattle, horses, ranches, and farms; that Metzger at the time of his death was in partnership with Korte under the name of Henry Korte, and that Metzger had made conveyances of all his property to Korte, which was really intended for the use of the partnership conducted under the name of Henry Korte, and had contributed $100,000 to the firm, which was indebted to him in that sum at the time of his death.

The bill further avers that Korte took out letters of administration upon Metzger's estate, and falsely and fraudulently inventoried the property as of the value of only $180.00, and that he had refused to account for the balance. It is also alleged that complainants are the children of Metzger, an unmarried man, and of one Viviana Martin, an unmarried woman, and that Metzger left surviving him no other natural children or de-cendants. A discovery and account-

ing are prayed, and that the property of the firm held in the name of Henry Korte, of which Metzger's heirs would be entitled, be decreed to complainants and for general relief. The defendants' answer denied all of the material allegations of the bill, and alleged that Metzger left surviving him one Juana, the wife of Korte, a natural child of Metzger, by whom she had been adopted. The court below, without objection from either side, referred the whole case to a master to take testimony and report his finding of fact and conclusion of law. A large amount of testimony was taken, and a great many witnesses were examined by the parties.

236 The principal question of fact seems to have been in regard to certain conveyances made in June, 1873, by Metzger to Henry Korte, covering all of his visible property, real and personal; the consideration of which, as named, was $18,230.00 in money and $2,300.00 in book accounts. The complainants introduced a number of old and intimate neighbors and business acquaintances, who testified that after these conveyances Korte and Metzger, in the presence of each other, repeatedly said that they were in business together as partners in equal shares under the name of Henry Korte, and that both of them seemed to have control and direction of the business as such partners. One of the witnesses introduced by the defendants, who was a subscribing witness to the deeds, testified that when the deeds were delivered Metzger said to Korte, "Henry, here is your papers; hand me my money." This occurred in the store, and there was a little room adjoining, into which Korte went and brought out a hat-box which contained bundles of money, each having around it a white paper band, whereon was marked the amount of the contents. They looked over the figures on the bundles, and then Metzger told Korte to take the money and put it away again, and Korte took the money and put it back in the place where he got it from.

On the part of the defendants witnesses were introduced to show that Metzger ceased all control of the store and other property after the conveyances and had repeatedly said that he had sold out to Korte, and a receipt for the consideration named was also shown in evidence. The answer avers that Metzger intended to go to Europe and had sold out to Korte with that expectation, but that he afterwards reconsidered his visit to Europe, and, being much attached to his daughter, Korte's wife, continued to live with her until his death.

The master found that the court had not in reality paid much of anything for the property, and that in truth and in fact Metzger and Korte were partners after the conveyances. The master expressly found that it was not the purpose of Metzger to disinherit his children, the complainants, and he recommended a decree in their favor.

The defendants filed exceptions to the report of the master, and the court below sustained the exceptions and entered a decree for the defendants dismissing the bill, and this cause was brought here by appeal.

237 The findings of the master were upon disputed questions of fact, and *was* reached after weighing the conflicting testimony of a large number of witnesses. He had many opportunities, afforded by observation, for judging of the intelligence, character, and credit of the witnesses which could not be obtained from the dry transcript of the testimony. The court below had in the nature of things no better facilities for weighing and judging that testimony correctly than an appellate court would have. It is not within the general province of a master to pass upon all the issues in an equity case, and it has been said that it is not competent for the court to refer the entire decision of the case to him without the consent of the parties. Kimberly *vs.* Arms, 129 U. S., 517. In the case at bar the court refer-ed all the issues to the master without objections, and the parties united in executing the order. Consent is to be presumed where there is no objection. In Metzger *vs.* Bonebreak, 108 U. S., 69, the bill was filed to set aside a deed to the debtor's wife on the ground of fraud upon his creditors, and the issues were referred to a master without objection. The master found the issues for the defendants, but the circuit court overruled the master on the facts and entered a decree for the complainants. On appeal to the Supreme Court the lower court was reversed, and Mr. Justice Miller remarked, "The evidence taken by the master was reported with his findings, and the case seemes to have been treated by the court below without much regard to the finding of fact by the master or any special regard to the exceptions made to his report. This is not correct practice in chancery in the circuit courts in the United States, whatever may be the rule in the State courts. The finding- of the master were *prima facia* correct." In Kimberly *vs.* Arms, 129 U. S., 517, the rule is laid down that the report of the master upon disputed questions of fact should be treated "as so far correct and binding as not to be disturbed, unless clearly in conflict with the weight of the evidence upon which they are made;" and in Tilgham *vs.* Proctor, 125 U. S., 149, Mr. Justice Grey says: "In dealing with these exceptions the conclusions of the master depending upon the way of conflicting testimony have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on
238 his part." See also Davis *vs.* Schwartz, 155 U. S., 633; Trow *vs.* Berry, 113 Mass., 146; How *vs.* Russel, 36 Maine, 127; *In re* Murray, 13 Fed. Rep., 551; Green *vs.* Bishop, 1 Clif. C. C. 186. The decisions on this subject by the Supreme Court of the United States are especially pertinent in view of section 522. Compiled Laws. If the rule in regard to the effect of a master's finding of facts were otherwise, the service of the master, now so generally employed to pass upon all the issues of the fact, would be of little aid to the administration of justice. Mason *vs.* Crosby, 3 Wood & M., 269. If the findings of the master had been based upon illegal testimony, or had he misapplied the law to the facts in drawing his conclusions as to them, there would undoubtedly have been good grounds for setting his findings aside—Troy Iron Fac. *vs.* Corning, 6 Blach., 332—but no exception was filed upon such ground and

none was urged. It has been urged that the presumptions in favor of a master's report applies only in the court below, and upon appeal from a district court the presumption is in favor of that court's action. In Howard *vs.* Scott, 50 Vt., 52, the court says, "Neither the court of chancery nor the Supreme Court on appeal will review the findings in regard to the weight to be given to the testimony," and in Medsker *vs.* Bonebreak, Tillam *vs.* Procter, and Kimberly *vs.* Arms, the Supreme Court reversed the court below for overruling the master's finding of facts. The court below had, as we have, a mere dry transcript of testimony upon which to base conclusions of fact. It will be unnecessary to determine whether the findings of fact by a master, which have some evidence to sustain them, will be treated as unassailable in all respects as a verdict of a jury; it will be sufficient to say in this case that the findings of fact by a master which depends upon the weight of conflicting testimony have every presumption of correctness in their favor and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part, and that a disregard of this rule by the district court, acting solely on the master's report and without any new testimony, is reversable error.

If this case had been *won* depending upon proof of a moral agreement made at the time of the conveyance to take and hold the real property conveyed by Metzger to Korte in trust for
239 Metzger, it would seem that the statute of frauds would have been and insuperable bar, as such *as* an express trust must have been manifested or proved by writing, although it need not have been so created and declared. 1 Perry, Trusts, sec. 79; Morran *vs.* Hayes, 1 Johns. Ch., 341. And the same result would probably have occurred had the complainants' right depended merely upon proof that the consideration mentioned in the deeds had not in fact been paid by Korte to Metzger. Evidence will be received to contradict the recitals in the deed as to the consideration paid in order to establish a debt from the grantee to the grantors, but not for the purpose of defeating the operation of the conveyance or creating a resulting trust. To allow parol evidence for such a purpose would be to break in upon the express provisions of the statute of frauds. 1 Perry, Trusts, sec. 162. But in this case the bill, the proofs, and the findings of the master proceeds upon the theory, and the point to which the evidence mainly directed was, that the name of Henry Korte was used in this matter as a firm name, while the partnership — composed of Metzger and Korte, and it was therefore a simple question of identity and not a case of express trust depending upon oral proofs or a case of resulting trusts depending upon the nonpayment of the consideration nemed in the deed, and, indeed, that seems to have been the view of the learned solicitors of the defendants, as no point was raised upon either such ground. The absence of actual consideration was a fact to be weighed i*b* connection with other testimony upon this subject, as equity naturally looks with suspicion upon conveyances made to strangers without consideration. One Perry, Trust-, *ces.* 162. The name of one of the partners may be used as a firm name, though a presumption may arise that

it was a personal transaction; yet the proofs may show it to be one of partnership. Bank *vs.* Monteath, 1 Denio, 414; Winship *vs.* Bank, 5 Pet., 529.

It therefore appearing from the report of the master that the facts were with the complainants as to the ownership by the firm of the property held by Henry Korte, and the complainants, being the heirs of Metzger, became vested with his interest, it is therefore ordered that the cause be reversed and remanded, with direction to the district court to enter a decree in conformity with the findings and recommendations of the master, and for such further pro-
240 ceedings therein as the nature of the case may require.

GIDEON D. BANTZ,
Associate Justice.

We concur:
THOMAS SMITH, *C. J.*
N. C. COLLIER, *A. J.*
H. B. HAMILTON, *A. J.*
N. B. LAUGHLIN, *A. J.*

241 And afterwards, to wit, on the twenty-fourth day of the said term, the same being Saturday, the 24th day of August, 1895, the following order was made and entered of record, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees.	No. 582. Appeal from San Miguel County.

This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice Bantz, Chief Justice Smith, and Associate Justices Collier, Hamilton, and Laughlin, concurring, reversing the decree of the court below, and remanding this cause to said court with directions to enter a decree in conformity with the findings and recommendations of the master, and for such further proceedings as the nature of the case may require. It is therefore considered and adjudged by the court that the decree of the district court in and for the county of San Miguel, whence this cause came into this court, be, and the same hereby is, reversed, and that this cause be, and the same hereby is, remanded to said district court, with directions to enter a decree in conformity with the findings and recommendations of the master, and for such further proceedings as the nature of the case may require; and it is further considered and adjudged by the court that said appellants do have and recover of said appellees their costs in this behalf expended, and that they have execution therefor.

242 And afterwards, to wit, on the tenth day of October, A. D. 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion; which motion is in the words and figures as following, to wit:

243 In the Supreme Court of the Territory of New Mexico, July Term, A. D. 1895.

DOLORITAS MARTIN DE CORDOVA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees. | No. 582. Appeal from District Court of San Miguel County.

Comes now William Naeglin, *et als.*, the appellees in the above and foregoing cause, in person, and by Long & Fort, their solicitors, and present to the court this their petition for a rehearing on the decision and judgment rendered in the above-entitled cause at the present term of this court, and ask leave of the court for time to be fixed by the court within which to file and present to the court a printed brief in support of this application, on the following grounds, to wit:

First. The conclusion of the court in the opinion rendered, is predicated largely, if not entirely, as appears from the following extract from said opinion: "It therefore appearing from the report of the master, that the facts were with the complainants as to the ownership by the firm of the property held by Henry Korte,
244 etc.," on the idea that the said master in his report, had found that there was established by Francis Metzger and Henry Korte after June 14th, 1873, at which period, as shown by the notice of dissolution, the firm of Metzger & Korte was dissolved, a new copartnership under the firm name of Henry Korte, consisting of Frank Metzger and Henry Korte, as the sole partners; whereas, the master did not find that any such copartnership was created, or that the real estate in controversy was conveyed to Henry Korte, as a copartnership, and not to Henry Korte as an individual.

Second. The court erroneously in its decision, reached the conclusion that the master in his report had found, that after the dissolution of the firm of Metzger & Korte, a new firm was created under the firm name and style of Henry Korte; whereas, the master did not so find.

Third. Because the appellees did not have opportunity to be heard in argument, upon the single point upon which the decision against the appellees is predicated, to wit: as to the organization of a new firm by Henry Korte and Frank Metzger, in the name and style of Henry Korte, to which the real estate in controversy was conveyed as found and determined in the opinion of the court, under the erroneous impression that the master in his report had so found.

Fourth. It is shown, indisputably, by the record and the finding of the master, that beyond all question, Henry Korte owned the undivided one-half interest in all the real estate conveyed by Francis Metzger to Henry Korte, and it is found by the master that Juana Guitterrez, wife of Henry Korte, a party to this action, was an heir to the real estate in controversy, (see second finding, page 220, Record), and in the third finding, folio 1111, that Doloritas, Josefita, and Isabellita Martin, are also heirs, and yet it is decided by this

court, on that state of the facts, that the three last named are entitled to a one-half interest in the real estate conveyed by Metzger to Korte; whereas, if the four were heirs, each would be entitled only to an undivided one-fourth of the real estate so conveyed by Metzger, even if the facts found by the master were correct, and on this further point, a rehearing is asked.

Fifth. For the reason that the court was influenced largely, if not entirely, in its opinion and decision, by the mistaken view
245 that the witnesses had personally appeared before the master, John H. Koogler, and had been examined by him, and that, therefore, he had better opportunity to judge of the weight of the evidence, on such personal observation than did the judge below, forming his opinion from the dry record in the case; whereas, the record shows, conclusively, and the fact is, that the oral testimony was not taken by the master, John H. Koogler, but by former masters and examiners, to wit, A. B. Sager, W. E. Gortner, and R. M. Johnson; (see folio- 737, 835, as to the evidence of Fernando Nolan and William Gandert; folio 900 as to evidence of John D. W. Veeder, and further evidence of Fernando Nolan; folio- 1014, 660, 239, as to other witnesses.)

Sixth. The record shows that the entire oral evidence was taken either before A. B. Sager, R. M. Johnson or W. E. Gortner, the only evidence being taken by the master, John H. Koogler, was a few written exhibits. The court inadvertently in its decision and opinion, was misled by the record, and reached the conclusion that the oral evidence was taken by the master, and erroneously gave to his conclusions, for that reason, greater weight than to the conclusion of the court below; whereas, the court and master, as shown by the record, each having an equal opportunity for observation of the witnesses, greater weight should have been given to the judgment of the court.

Seventh. Because, it appearing by the record that neither the court below, nor the master, had opportunity to see and hear the witnesses, or to observe their demeanor, this court should have presumed on the face of the record, under such circumstances, in favor of the court, rather than in favor of the master.

Eighth. Because, as an original question, from the evidence in the case, concluding from the evidence alone uninfluenced by the decision of the court below, or the report of the master; there is no equity, or right of recovery, under the law and the evidence, in the complainants.

Ninth. Because, on the face of the record, the court should have presumed in favor of the decision of the court below, and have decided in favor of the appellees.

Tenth. Because the interests adjudged to the wife of Henry Korte, are less, in the real estate in controversy, that she is entitled
246 to, upon the report of the master and the opinion of this court.

Eleventh. The only ground upon which the master makes his conclusion, is that the conveyance from Francis Metzger to Henry Korte of the real estate in controversy — without considera-

tion and fraudulent. On that state of facts, the complainants are estopped by the record from making any claim.

LONG & FORT,
Sol. for Appellees.

We call the attention of the court to some suggestions with respect to the decision and judgment reached. The court below is directed, at the conclusion of the opinion, to enter a decree in conformity with the findings and recommendations of the master.

The master concludes that the visible property, which, in effect, is only the real estate conveyed by Metzger to Korte, should be equally divided. It must be clear that the master dropped into an inadvertence in making such recommendation. When Metzger conveyed the real estate, as appears by the report, Korte already owned a one-half interest in the real estate so conveyed, or if not so, and it went to Henry Korte as a copartnership, and was held by him in that name, as copartnership property, and for copartnership uses, then the conveyance, on the theory found by the master, would, upon its delivery, convey and carry to Korte a one-half interest in the real estate.

On the theory of the master, that is, his theory of the facts, when these deeds were delivered in June, 1873, what interest did Metzger have and what Korte? If there was a firm named Henry Korte, composed of these two partners, then, on the theory of the master as to the facts, on the delivery of the deeds, subject to partnership debts, of course, Korte owned one-half of the real estate, and Metzger the other half; then Metzger died, and there were no debts to be satisfied out of his property, what would there be to descend to Metzger's heirs? Evidently, only one undivided half, certainly not the whole, and in this undivided one-half Mrs. Korte, on the theory of the master, that is, on the law, applied to the master's facts, would take one-fourth, and the other three, Doloritas, Josefita and Isabellita, the other three-fourths; whereas, the judgment of this court divides the entire real estate into two halves, and thus cuts out Mrs. Korte of her one-fourth interest in the undivided one-half, unless it is the meaning of the master that Mrs. Korte is to
247 have first: one-half set off to her, in the several tracts of land, and then the other half given one-half to Mrs. Korte, and the remainder of that half to the complainants. Certainly, no view can be taken which would take away from Mrs. Korte the half of the land owned by her husband at his death, or which would take that into consideration in partition, for that half interest is, and was, Korte's and not Metzger's, and the only interest in the real estate that could possibly descend to complainants, was an interest in the undivided one-half of the real estate, and we respectfully submit that, in any event, the judgment of the court should be reconsidered and the decree made certain by direction to the lower court in the matter suggested. To our minds, it would be grossly unjust, in any possible view, to entirely cut out Mrs. Korte from any interest in the undivided half, if there was a firm, as the master found.

Again, it is said, in the opinion, "The findings of the master were upon disputed questions of fact, and *was* reached after weighing the conflicting testimony of a large number of witnesses. He had many opportunities afforded by observation, for judging of the intelligence, character and credit of the witnesses, which could not be obtained from the dry transcript of the testimony. The court below had, in the nature of things, no better facilities for weighing and judging the testimony correctly, than an appellate court would have."

We are perhaps to blame for the inadvertence into which the court has fallen in the above quotation. The question had been so earnestly pressed that, for want of exceptions, the master's report could not be set aside in the court below, and it was so earnestly urged that the deed from Metzger to Korte was fraudulent, and maintained with so much vigor, that Korte was engaged in trying to divert, by undue influence on Metzger, the property owned by him, to Korte's wife, that we neglected to call the attention of the court to the fact that the witnesses had been examined before other masters and examiners and not before Koogler, but as a court of conscience whether appellate or otherwise, "delights to do justice," to use the language of an eminent jurist, we feel confident this omission will not be allowed to work any injustice to the defendants.

What the rule should be, where the master has examined the witnesses, observe their bearing and so forth, as to the weight which should be given to his report, is one question; and
248 where the evidence has not been taken by him, and he has no such opportunities, is an entirely different question. In a case where such superior opportunities have been enjoyed by the master, we are not inclined to find fault, with the rule on that subject fixed by the court in the opinion in this case, but we respectfully urge upon the court that while the rule so declared in such a case, is to our minds the true one and entirely just, yet it ought not to be applied under the facts in this case where the master did not examine the witnesses, did not hear them testify, but only formulated his conclusions from the dry record. In that respect, Master Koogler and the chief justice and this court, all stand on exactly equal footing, neither having had the opportunity of personal observation during the hearing.

Now, what should be the rule in this case? The one shown by the record? Why should any greater weight be given by the appellate court in such a case to the opinion of the master than to the opinion of the chief justice, or one of the associate justices of the supreme court?

We hope the court will feel at liberty, each justice for himself, to take up the record and consider the questions we now present. If the court draws upon its observation in judicial procedure, it must be apparent that it is very rarely, indeed, if ever, that the master is found equal to the presiding judge and we earnestly urge, that it is not a sound rule to hold that a master's opinion, made up from a

dry record, is higher than the opinion of the judge, made up from the same record.

An examination of the record will disclose, that R. M. Johnson was appointed master, June 28th, 1887 (folio 215), Koogler was appointed master, April 2d, 1889, (folios 221 and '22), and before the appointment of Koogler as master, almost all the oral evidence in the case had been taken, as will be seen by reference to the folios named. Morrison, folio 240, Doloritas Martin, folio 364, Viviana Martin, folio 419, Josefita Martin, folio 461, Lewis Kahn, folio 489, Manuelita Valasquez, folio 498, Antonio Domingo Lopez, folio 499, Rafael Romero, folio 661, Fernando Nolan, folio 737, William Gandert, folio 836, which constituted the body of the evidence, all taken before Koogler was appointed. The two certificates of Gortner, folios 835 and 1014, show that the remainder of evidence
249 was taken before him as official stenographer and examiner; evidently the evidence taken by Gortner was in shorthand, and subsequently extended and typewritten. It is shown from folio 899 to the end, that none of the witnesses signed their evidence, evidently for the reason that the testimony was taken in shorthand; whereas, the witnesses shown before folio 889 have almost uniformly signed their evidence.

The only place where Special Master Koogler is shown to have taken any evidence, is at folio 1015, which proves that he took the exhibits, so we feel that an examination of the record will prove our statement to be correct, that the master who made the report did not hear the witnesses testify.

The master's conclusions of facts and law, do not seem to be well separated, or separated at all, and it is evident from the manner in which he has mingled the law and facts, that he did not have a very clear idea of either. Ordinarily and properly, facts are deduced from the evidence and numbered consecutively, and then the conclusions of law, which follow such facts, are stated, and numbered in the same manner, so that it may be clearly seen what facts are regarded as established, and the law that is applicable thereto, in the opinion of the master, and a failure to so find, is very strong evidence of confusion in the mind of the master. It appears to us the various members of the court must see, from a careful reading of this report, that the court below was entirely justified in setting it aside and disregarding it, because tested in the light of the testimony, it is clearly wrong, and the facts found, so far as can be gathered from the report, do not justify the legal conclusion.

What was uppermost in the mind of the master in this report? After commenting on the evidence from folio 1098 to 1102, the master observes, commencing at the last-named folio: "All of these instruments were written out carefully, and executed before witnesses with a degree of formality and publicity unusual with these close-tongued, secretive and cautious partners, which never before or afterwards, characterized their dealings with each other. The unusual character of the transaction is to my mind a suspicious circumstance."

Suspicious in what respect? As tending to prove that Korte and

Metzger, after they had dissolved their copartnership, as shown in the notice of dissolution publicly published to the world in
250 the Las Vegas Gazette, June, 1873 (folio 1058), immediately set to work to organize a new copartnership under the firm name of Henry Korte, or suspicious as tending to show that Metzger was fraudulently conveying his lands to Korte, as an individual person to defeat the payment of a promissory note mentioned by some of the witnesses? If the latter, both Metzger and his heirs would be stopped from setting up such fraud. We do not believe the master, in the comment quoted, had the slightest idea of drawing therefrom the inference that Henry Korte was the name of a copartnership to which the land was being conveyed, but to the contrary, that he was looking for indications of fraud whereby to overcome and set aside the deed.

Again he says, folio 1104: "The payment of money made by Korte to Metzger, at the time the deeds were executed, smacks of a pretended or play payment." A circumstance, we may observe, which in no way tends to prove the formation of a new partnership, but may tend somewhat, though we do not think it does, to prove that the deed was executed to keep the land out of the hands of Metzger's creditors.

Another recital in the finding is most remarkable. It seems to have weighed very heavily on the mind of the master and is stated as follows:

"Another transaction, had about a year previous to this dissolution, whereby Metzger made declarations attempting to constitute the wife of Korte his sole and universal heir, and thus to exclude these complainants and cut them off from any participation in any property he might leave at his death, does not look right, for a man endowed with his natural affection for his offspring, and unfortunate offspring at that."

Did not Metzger have the perfect right to make a will and devise his entire property to Mrs. Korte if he so chose? He knew better than any other living person what he had done for Vivian Martin and for her children, and what was due to him from them, and besides it may be that he knew they were not his children, or that he had doubts on that point. At all events, there is no legal principle which would restrain him from preferring, if he chose, a legitimate child to those that at least might have had good opportunity to spring from some other source. The master seems
251 to be impressed with the idea that Metzger did not make such a provision for these children as in the judgment of the master he should have done, and that it was the duty of the court, in some manner, to find a way, without reference to Metzger's wishes, or the conveyances that he had made or the attempts that he had made to settle his property upon Juana Korte, to undue his work, and make a distribution, according to the idea of the master, and all of his argument is not in the direction of a new copartnership styled Henry Korte, but in the direction of a fraudulent conveyance.

Read the 1107, 1108 and the 1109 folios. In what possible way,

from what is said there, tend to establish the creation of the new partnership named Henry Korte, and the conveyance of the land to that partnership? We submit that it is just as much a suspicion and conjecture, and more so, that Henry Korte had the slightest possession or control, at the time of his death, or after, of any money belonging to Metzger, as it is that it was buried in the earth. The simple fact is, that there is not the slightest evidence that Korte had this money, and the master does not so find, and so far as the real estate is concerned, it makes no difference.

The key to the report is found in folio 1110: "If Henry Korte connived at and sought to further it by machinations, he ought not to be permitted to enjoy the fruits of such a wrong." In that folio, the master charges, outside of any issue in the case, that Korte was seeking to influence Metzger to convey all his property to Korte's wife and that he had done so, and therefore the court ought not to allow him to hold the real estate. A strange conclusion, outside of the issues and only valuable as tending to show the ground on which the master made his findings.

It is not charged in the bill that Korte brought undue influences upon Metzger and for that reason the conveyance should be set aside. We invite careful re-reading of this report and submit that the primary idea of the master was that the conveyance is fraudulent, and that there was no question of identity in his mind. If Metzger would be estopped from averring and setting up that he made these deeds to keep his creditors from collecting the promissory note, as he would in law, so, also, he would be estopped from setting up that he and Metzger created a false and fictitious
252 firm named Henry Korte, and conveyed the land to that name, to reach the same end. The estoppel works as strong in the one case as in the other. There could only be one reason why any such new firm or copartnership could be created, and that to put the real estate in the name of such firm and hide it away so that the promissory note could not be collected, and the entire scheme under such circumstances would be fraudulent, and Metzger would be estopped from asserting it, and his heirs would be controlled by the same estoppel.

Was a new copartnership formed under the firm name of Henry Korte?

The master finds and the evidence proves, that the old firm of Metzger & Korte was dissolved, and notice of dissolution published, June 14th, 1873, in the Las Vegas Gazette, the published notice being an exhibit in the record. That ended the old firm of Metzger & Korte, and carried it out of existence. The conveyance was not to the firm of Metzger & Korte, but to Henry Korte. The decision in the case, all other contentions having been found in favor of appellee, rests on the very narrow ground, that after the dissolution of the firm of Metzger & Korte, a new *co* copartnership was formed under the style of Henry Korte, that Metzger & Korte were the copartners, and that the real estate in controversy, was deeded to that copartnership, under such firm name. We contend that the master never so found, but to the contrary, that his idea, as shown

by the report, was that there was fraud in the two particulars, at least, for which the conveyance would be set aside, to wit:

First. That there was an outstanding note against Francisco Metzger, and that, to place his real estate where it could not be reached on a judgment on said note, that he conveyed it to Henry Korte.

Second. That Henry Korte influenced Metzger to make his, Korte's, wife the sole heir to all this property, and sought to get Metzger to give her all the property to the exclusion of the complainants.

The master does not state it exactly that way, but that is, in effect, the substance of his report. He then, as conclusion of law, treating the actions of Metzger in the deed as fraudulent, and the influence of Korte as also fraudulent, regards the deeds as void, as we construe and understand the master's report; but in the decision
253 here, the idea entertained seems to be that a new firm was created, named Henry Korte, and that the conveyances were to this firm, and not to Henry Korte as an individual.

We respectfully ask a careful reconsideration of that conclusion. It does not seem to us that it is so found in the master's report, but, if so found, in view of the fact that the master did not hear the evidence, the opinion of the court below on that point should prevail; but if considered as an original question, then the evidence, on any careful reasoning, cannot sustain the conclusion of a new partnership. There is not a line anywhere which says any new partnership was formed. Having dissolved, it is unreasonable to suppose that these men immediately formed a new copartnership. Examine the exhibits, and it will be seen that the deeds of conveyance, the various bills of sale of personal property, and the notice of dissolution, all bear very nearly the same date, and are evidently one transaction. The parties lived at Mora, the notice of publication was made at Las Vegas, and it would take several days to execute all these papers, and publish the notice, which would account for the difference of a day or two in date.

From folio 1016 to 1049, are five deeds of conveyance, all bearing date, June 9th, 1873. Folio 1058 is the notice of dissolution of copartnership, which took effect, by its terms, from and after that date, which proves that at the date of the conveyances, and for five days thereafter, the firm of Metzger & Korte was in existence, and no such firm as Henry Korte, therefore, could have been in existence at the date of the execution and delivery of these several deeds of conveyance.

It is unreasonable to suppose that on the 9th of June, 1873, and there is no evidence to prove to the contrary, that with one firm in existence about to be dissolved that the same copartners had already formed a new copartnership and adopted a new firm name. The effect of these conveyances must be tested as of the date of their execution and delivery, and that not as of some subsequent date, two or three years afterward, and we ask the inquiry, does this evidence prove that at the date of the execution and delivery of the

deeds of conveyance, any firm or copartnership named Henry
254 Korte, was in existence? We contend that these deeds were executed to the grantee, as an individual, and that there is not the slightest evidence tending to prove that, at that date, there was any such firm as Henry Korte in existence, to take and hold real estate. If there was no such copartnership, then it must have been intended to convey to Korte, as an individual.

The evidence all tends to prove that Metzger was growing old, that he had confidence in Korte, and had greater love for his wife than for any other person. He was living with Korte, their relations were pleasant, Korte's wife was evidently an affectionate daughter who had won the esteem of her father; he was growing old, tired of business responsibilities, and it is entirely natural that the transactions should have occurred as we contend. The presumption on the face of the conveyance is, that the deeds were to Korte as an individual, and the recitals in the various exhibits corroborate that presumption.

In the notice of dissolution, over Metzger's own signature, he recites "Frank Metzger retiring from business." Appellants contend that when Metzger said that to the world, he stated a falsehood; such is not the presumption of law. In Exhibit "1," under date of June 10th, a day after the execution of the deeds, Metzger speaks of Korte as, "my former partner." There could be no business or honest reason, why the old firm should be dissolved and the strange and unusual act done, of making a new firm, misleading to the public. It is in violation of all legal and fair presumptions to conclude such new firm was created. The evidence of a few witnesses, many years after the delivery of the deeds as to declarations by Metzger of the then existing conditions, do not relate back to the date of the deed. As to these subsequent declarations, they are years after the date of the deeds, are disputed by other declarations to a contrary effect, the one being about *or* even balance of the other and none of them strong enough to overthrow the exhibits. It is conditions existing at the execution of the deeds, which are of paramount importance.

We cannot believe that this evidence proves the creation of any such firm, unless it also proves that the creation was a fraudulent
devise made by Metzger, to put his property out of the hands
255 of his creditor, the pretended holder of the promissory note. The argument that proves there was such a firm, proves too much. It could not, in such a name, have existed for honest purposes.

We respectfully request the court, to open up this cause, and give us opportunity to cite authorities and make further argument upon the concluding portions of the decision and opinion.

LONG & FORT,
Sol. for Appellees.

256 And afterwards, to wit, on the forty-seventh day of the said term, the same being Wednesday, the fifth day of Feb-

ruary, 1896, the following order was made and entered of record, to wit:

It is ordered that this court do now adjourn until court in course. All causes not otherwise disposed of are continued.

257 Be it remembered that afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday of July, A. D. 1896, the same being Monday, July the twenty-seventh, A. D. 1896, and on the twenty-first day of the said term, the same being Wednesday, the nineteenth day of August, A. D. 1896, the following, among other, proceedings were had, to wit:

257½ And afterwards, to wit, on the twenty-first day of said term, the same being Wednesday, the 19th day of August, 1896, the following order was made and entered of record, to wit:

DOLORITAS MARTIN DE CORDOVA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees.	No. 582. Appeal from San Miguel County.

This cause having been submitted to the court upon a motion for a rehearing heretofore filed herein, the court, being now sufficiently advised in the premises, doth order and adjudge that said motion be, and the same hereby is, denied.

258 And afterwards, to wit, on the twenty-fourth day of August, 1896, there was filed in the office of the clerk of the supreme court of the said Territory of New Mexico a motion; which motion is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees.	No. 582.

Now comes the appellants in the above-entitled cause, by their solicitors, and suggest to the court that it appears by the record of this court in said cause that a judgment in said cause was entered of record in August, 1895, and that a motion for a rehearing in said cause was duly filed at the July term, 1895, and that said motion was not disposed of until the present term of this court. Wherefore the said appellees, by their solicitors, further show to the court that said entry of said judgemnt and decree at the said July term, 1895, of this court, and while the said motion for rehearing was pending, was erroneous, and that entry thereof was by mistake and inadvertence.

Whereupon the said appellants move and pray this honorable court to vacate the said erroneour judgment and decree, so entered at the said July term, 1895, of this court, and enter the said judgment and decree as of the present term thereof.

LONG AND FORT,
EUGENE A. FISKE,
Solicitors for Appellees.

259 And afterwards, to wit, on the twenty-sixth day of the said term, the same being the 25th day of August, 1896, the following order was made and entered of record, to wit:

DOLORITAS MARTIN DE CORDOVA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees. } No. 582. Appeal from San Miguel County.

Now, on motion of Long & Fort, Esqrs., and Eugene A. Fiske, Esq., solicitors for said appellees, which said motion was opposed by T. B. Catron, Esq., solicitor for appellants, and it appearing to the court that the judgment and decree of this court in this cause was entered of record on the 24th day of August, 1895, by mistake, and while a motion of said appellees for a rehearing of said cause by this court was duly pending herein, which said motion was not disposed of until the present term of this court; and the court now being sufficiently advised in the premises, it is ordered and considered by the court that the said judgment and decree of this court in said cause, so entered on the said 24th day of August, A. D. 1895, be, and the same and the record thereof is, vacated and set aside; and it is further ordered and considered by the court that judgment of this court, in accordance with the opinion of this court heretofore filed herein, be entered at the present term of this court, and in accordance therewith it is considered and adjudged by the court that the decree of the district court in and for the county of San Miguel, whence this cause came into this court, be, and the same hereby is, reversed, and that this cause be, and the same hereby is, remanded to said district court with directions to enter a decree in conformity with the findings and recommendations of the master, and for such further proceedings as the nature of the case may require; and it is further considered and adjudged by the court that said appellants do have and recover of said appellees their costs in this behalf expended in the court below as well as in this court, to be taxed, and that execution issue therefor.

260 And afterwards, to wit, on the seventh day of September, A. D. 1896, there was filed in the office of the clerk of the said supreme court a motion to stay execution; which said motion is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et al.*, Appellees.

Come now the appellees in the above-entitled cause and move and pray the court to enter an order in said cause staying the issue of execution in said cause until the filing herein of the statement of

facts herein required to perfect an appeal to the Supreme Court of the United States in said cause.

LONG & FORT,
EUGENE A. FISKE,
Solicitors for Appellees.

261 And afterwards, to wit, on the thirty-seventh day of said term, the same being Monday, the seventh day of September, 1896, the following order was made and entered of record, to wit:

DOLORITA- MARTIN DE CORDOVA *et al.*, Appellants,
vs.
HENRY KORTE *et al.*, Appellees.
No. 582. Appeal from San Miguel County.

Upon reading and filing the motion of appellees herein, by their solicitors, Long and Fort, Esqrs., and Eugene A. Fiske, Esq., it is ordered that the issue of mandate and of execution in this cause be, and the same are hereby, stayed during the present term of this court, provided that said appellees or some one or more of them shall within six days from this date make, execute, and file in this court a good and sufficient bond, with two or more sureties, in the sum of nine hundred dollars, and approved by the clerk of this court, to the said appellants and conditioned to pay to the said appellants all accrued costs in this cause which are lawfully payable by said appellees in said cause to said appellants in said cause if said appellees shall not, during the present July term, 1896, of this court, duly take an appeal in said cause from the judgment or decree of this court in this cause to the Supreme Court of the United States, and also in addition to said appeal make, execute, and file in this cause a good and sufficient bond to stay and supercede the execution of the said decree pending the determination of said cause on such appeal.

262 And afterwards, to wit, on the twenty-fourth day of September, A. D. 1896, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion for appeal; which said motion is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants,
vs.
HENRY KORTE *et al.*, Appellees.
No. 582.

Now come the appellees in the above-entitled cause and move and pray the court to grant them an appeal to the Supreme Court of the United States from the decree and decision of this court in this cause.

LONG & FORT,
EUGENE A. FISKE,
Solicitors for Appellees.

263 And afterwards, to wit, on the same day, to wit, the twenty-fourth day of September, A. D. 1896, there was filed in the office of the clerk of the supreme court of the said Territory of New Mexico a motion to file statement and fix bond on appeal; which said motion is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants,
vs.
HENRY KORTE *et al.*, Appellees. } No. 582.

Now come the appellees in the above-entitled cause and move and pray the court here to make, certify, and file in this cause and court a statement of facts, and also the rulings of the court on the admission and rejection of evidence when excepted to, as required by law, to enable said appellees to take an appeal from the decree and decision of this court in said cause to and to have said decree and decision of this court reviewed on appeal by the Supreme Court of the United States, and that this court will fix the amount of the bond to be given on said appeal by said appellees to supercede the execution of said decree and decision in said cause and court pending said appeal, as required by the rules and practice of this court and the Supreme Court of the United States.

LONG & FORT,
EUGENE A. FISKE,
Solicitors for Appellees.

264 And afterwards, to wit, on the same day, to wit, the twenty-fourth day of September, A. D. 1896, the following, among other, proceedings were had and entered of record, which is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants,
vs.
HENRY KORTE *et al.*, Appellees. } No. 582.

This cause coming on to be further heard upon the application of the appellants herein that the defendants in said cause be required to give a good and sufficient bond in case of an appeal in said cause from the judgment and decree of this court, and the said appellees having now applied for an appeal, and the same having been by the court granted, it is thereupon ordered, adjudged, and decreed by the court that an appeal in said cause be, and the same hereby is, allowed upon the appellees filing in said cause a good and sufficient supercedeas bond to the said appellants herein in the sum of eight thousand dollars, with good and sufficient sureties thereon, conditioned that the said appellees shall pay to the said appellants all costs of said cause and any and all damages that may accrue to them by virtue of said appeal, said bond to be approved as to the sufficiency of the sureties thereon by the chief justice of this court,

and to be filed within ninety days from the date of the judgment and decree entered by this court herein.

September 24th, 1896.

265 And afterwards, to wit, on the twentieth day of October, A. D. 1896, there was filed in the office of the clerk of the said supreme court of the Territory of New Mexico a bond: which bond is in the words and figures as following, to wit:

In the Supreme Court of the Territory of New Mexico.

DOLORITAS MARTIN DE CORDOBA *et al.*, Appellants, *vs.* HENRY KORTE *et als.*, Appellees.	No. 582. Chancery.

Know all men by these presents that we, William Neaglin, Annie Neaglin, Annie Neaglin, administratrix of the estate of Henry Korte, deceased; Charles Korte, Frank Korte, and Luciano Gallegos, Macario Gallegos, Antonio D. Pacheco, Juan Narano, Pedro Pechaco, Patricio Sanchez, John Florence, Vidal C. Martinez, Rumaldo Martinez, Jose Demetrio Medina, and Rafael Ortiz, are held and firmly bound unto Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josi*d*ita Martin de Duran, Jose Manuel Duran, Isabelita Martin, and Viviana Martin in the full and just sum of eight thousand dollars, to be paid to the said Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josifita Martin de Duran, Jose Manuel Duran, Isabelita Martin, and Viviana Martin; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 15th day of October, A. D. one thousand eight hundred and ninety-six.

Whereas lately, at *at* the regular July term, A. D. 1896, of the supreme court of the Territory of New Mexico, in a suit pending in said court between Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josifita Martin de Duran, Jose Manuel Duran, Isabelita Martin, and Viviana Martin, appellants, and William Naeglin, Annie Naeglin, Annie Naeglin, administratrix of the estate of Henry Korte, deceased; Charles Korte, Frank Korte, and Edward Korte, appellees, a decree has been rendered and entered in favor of said appellants and against the appellees; and whereas the above-named appellees have prosecuted an appeal to the Supreme Court of the United States to reverse the said decree rendered in said suit

266 by the said supreme court of the Territory of New Mexico:

Now, therefore, the condition of the above obligation is such that if the above-named William Neaglin, Annie Naeglin, Annie Naeglin, administratrix of the estate of Henry Korte, deceased; Charles Korte, Frank Korte, and Edward Korte shall prosecute said appeal to effect and answer all damages and costs if they

fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

	WILLIAM NAEGELIN.	[SEAL.]
	ANNIE NAEGLIN.	[SEAL.]
	ANNIE NAEGLIN, *Adm.*	[SEAL.]
	CHARLES KORTE.	[SEAL.]
	EDWARD KORTE.	[SEAL.]
	FRANK KORTE.	[SEAL.]
$400.00.	LUCIANA GALLEGOS.	[SEAL.]
$1,000.00.	MASARIO GALLEGOS.	[SEAL.]
$1,000.00.	ANTONIO D. PACHECO.	[SEAL.]
$500.00.	JUAN NAVARRO.	[SEAL.]
$500.00.	PEDRO PECHACO.	[SEAL.]
$500.00.	PATRICIO SANCHEZ.	[SEAL.]
$1,000.00.	RUMALDO MARTINEZ.	[SEAL.]
$1,000.00.	JOSE DEMETRI MARTINEZ.	[SEAL.]
$1,000.00.	RAFAEL ORTIZ.	[SEAL.]
$1,000.00.	JOHN FLORENCE.	[SEAL.]
$500.00.	VIDAL C. MARTINEZ.	[SEAL.]

TERRITORY OF NEW MEXICO, }
County of Mora. }

Know all men by these presents that William Naeglin, Annie Naeglin, Anna Naeglin, administratrix of the estate of Henry Korte, deceased; Charles Korte, Frank Korte, Edward Korte, and Luciano Gallegos, Macario Gallegos, Antonio D. Pacheco, Juan Navarro, Pedro Pechaco, Patricio Sanchez, Rumaldo Martinez, Jose Demetri Martinez, Rafael Ortiz, John Florence, Vidal C. Martinez each personally appeared before me, the undersigned, probate clerk in and for said county, and each for himself severally acknowledged that he signed the above and foregoing bond for the uses and purposes therein mentioned; and each for himself also, being first duly sworn, on his oath says that he is worth, over and above all legal liabilities and exemptions, the amount of the value set opposite his name.

Witness my hand and official seal this 15th day of October, A. D. 1896.

[SEAL.] PATEMON ORTIZ,
Probate Clerk.

Approved:
THOMAS SMITH, *Judge.*

267 In the Supreme Court of the Territory of New Mexico, July Term, A. D. 1896.

DOLORITAS MARTIN DE CORDOBA *et als.*, Appellants, }
vs. } No. 582.
HENRY KORTE *et als.*, Appellees. }

Now, on this day, comes the appellees in this court, by their counsel, and move the court to make and certify a statement and finding

of facts in said cause for the purpose of an appeal on their part to the Supreme Court of the United States; and thereupon the court grants said motion.

And the court, now being sufficiently advised, and pursuant to the statute in such case made and provided, does make and certify the following statement and finding of facts proven and established by the evidence in the cause, to wit, all and singular the facts found and stated in the master's report, said report being in the words and figures following, to wit:

The undersigned, John H. Koogler, heretofore appointed special master in the above-entitled cause to report the proofs with his findings of facts and conclusions of law thereon, respectfully represents:

That a part of the testimony in said cause was taken before A. B. Sager, as examiner; a part before W. E. Gortner, as examiner, and still another part by myself; and that all the proofs thus taken have been submitted to me for consideration and are herewith reported as a part of this report.

I have been attended by T. B. Catron, Esq., and J. D. W. Veeder, Esq., solicitors for complainants, and G. W. Pritchard, Esq., solicitor for defendants. Upon the pleadings and the testimony, I find as matters of fact:

1st. That Frederick Metzger, sometimes called Frank Metzger and Francisco Metzger, died intestate in Mora, Mora county, New Mexico, in the month of February, 1885. He was an old resident of the county, having engaged in business in the town of Mora as early as the year 1849. He was an active business man, engaged in mercantile business, buying, selling, and raising stock, taking Government contracts for furnishing supplies, ranching, etc., and had accumulated and been the owner during his lifetime of a considerable amount of property, real and personal.

2nd. Frederick or Frank Metzger had never married during his lifetime, but had lived or cohabited with at least two women, natives of the Territory, at different times, and with one for a number of years. At one period of his life he had cohabited with a woman by the name Apolonia Guiterres, who at the time and during the time of her cohabitation with Metzger was a married woman, the
268 wife of Bernardo Martin. By this woman, Appolonia Guiterres, Metzger had a daughter, Juanita, or Juana, called Juana Metzger. He also lived and cohabited with Vivian- Martin for a period of about seventeen years, until about 1875, and was the father of three daughters, Dolores, Josefita, and Isabellita, complainants in this suit. The woman, Viviana, at the time of the birth of these children, the complainants, was an unmarried woman, and remained single all her life.

3rd. Henry Korte, one of the defendants in this suit, in about the year 1866, married Juana Metzger, the daughter of Frank, by the woman Apolonia, and about the same time he entered into partnership with Frank Metzger, in all branches of his business, mercantile, cattle-raising and farming. He was a young man, active in getting money and close in keeping it. Previous to his marriage with Juana, he had property and money to the amount of about $7,000.

By investing with Metzger about three thousand dollars and five thousand more given to his wife by Metzger, he became a half owner in the merchandise then carried by Metzger and estimated at a value of $16,000. He thus became an equal partner in the business with Metzger.

4th. Metzger resided with his son-in-law, Korte, in Mora a part of the time, and a part of the time at Cebolla ranch with the woman Viviana Martin, where he had provided a home for her and her children, alternating between the two places in about equal portions of the time. The firm of Metzger & Korte had but little faith in banks, or rather depositories under human control, and whatever money which was accumulated by them, and which — probably considerable, was kept in the house or hid away.

5th. On the 6th day of May, 1872, Frank Metzger executed a declaration which he filed in the office of the probate clerk of Mora, purporting to recognize Juana Metzger, wife of Henry Korte, defendant, as a natural daughter, and purporting to declare her sole, absolute and universal heir of the goods which he possessed.

6th. On the 10th day of June, 1873, the firm of Metzger & Korte dissolved formally, the dissolution notice as published declaring the firm dissolved and that Metzger had retired from the partnership. Deeds of conveyance of interest of Metzger in all the lands claimed by himself, or by the partnership, were duly executed to Korte; and bills of sale of his share in the stock of merchandise and the cattle were likewise made to Korte. The whole consideration for this property as stated in the deeds and bills of sale amounted to $18,630. On the same date, June 10, 1873, Metzger executed to Korte a receipt for the sum of $18,330, acknowledging the payment of that amount, in money and books accounts, for the real estate and
269 personal property contained in the five deeds and bill of sale.

The whole transactions seems to have been attended by acts of considerable formality. The deeds, bill of sale and receipt were executed in the presence of two witnesses, Juan Jose Gallegos and Anastacio Trujillo, who were called in especially to attest the transaction. Metzger took the documents in his hands and said to Korte, "Henry, here are your papers, hand me my money!" Whereupon Korte went into an adjoining room and brought out a box with a bundle of paper money, with white paper strips around each bundle, endorsed with the amount on each bundle. After they had looked over the figures, Metzger told Korte to take the money and put it back in the box and the latter took it back where he got it from. The whole transaction was celebrated by opening a bottle of white wine.

7th. One of the witnesses, A. Morrison, testifies to having had a conversation with Metzger in 1873, after this purported dissolution, in which the latter explained this transaction to him, that he had made over his property to Henry Korte in order to save himself from a promissory note amounting to about eight or nine thousand dollars, which he had once paid, and which was sought to be collected from him again unjustly, but that he would not give up his business, but would retain in it the property and remain a silent

partner in the business, which would be carried on in the name of Henry Korte. According to the testimony of a good many witnesses whose means of knowledge were considerable, the business seems to have been conducted about the same after this purported dissolution as it was before. Louis Kahn, an old and near neighbor, testified that Metzger took an active interest in the business up to the time of his death, gave directions about what should be done, and seemed to control it as much after 1873 as before. Manuel Esquibel who worked for them, testified that they both employed him, said the business belonged to them both, and that both paid him for his services. When he quit work for them in 1880, he turned over to them some 4,087 head of cattle. These cattle were all sold previous to Metzger's death, some two thousand of them having been sold in 1881. Fernando Nolan and J. D. W. Veeder testified that Korte had admitted when giving testimony in the probate court that he had never dissolved partnership with Metzger until the old man died, and that he was managing the business for both. This, however, was denied by Alexander Branch, a witness for the defendant. William Gandert testified that Metzger claimed to own the property after 1873 as before. The answer of the defendant accounts for the purported dissolution in 1873 on the grounds that Metzger at that time was contemplating a trip to Europe. There was also some evidence offered to support the allegation that the firm was fully dissolved, but the great weight of the testimony seems to be to the effect that Metzger in reality retained his interest in the business after this purported dissolution, that in reality he was still a partner with Korte, and that seemed to be the general belief among their neighbors and friends and people with whom they dealt, gathered from the manner in which they acted towards each other, their admissions and conversations in each other's presence, and the manner in which they dealt with the world. The theory that Korte had not in reality paid anything to Metzger at the time of the execution of the deeds heretofore mentioned seems to be likewise supported by the testimony of J. H. Mink, who says that in 1873 or 1874, in talking with Metzger about this sale, the latter said that Korte still owed him ten or twelve thousand dollars.

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7th. Metzger paid no taxes on real estate, in his name after the year 1873, in the county of Mora until his death, and during the years 1879 and 1880, he paid taxes on twelve thousand dollars in cash.

8th. Frank Metzger died in 1885, and Henry Korte as his administrator, made a return of property as belonging to the estate, of $182.00, consisting mostly of personal apparel of a total value of $59.00, a watch valued at $125 and $8.00 in money.

9th. Henry Korte died in 1888, in the latter part of the year, and William Naeglin, his son-in-law, was appointed administrator of his estate. He made a return of personal property belonging to such estate of a total value of $600.00, consisting principally of domestic animals, farming implements, tools and some merchandise.

10th. The real estate which was purported to be conveyed by Frank Metzger to Henry Korte in the transaction of June 10th, 1873,

and which was still in the name of Henry Korte at the time of his death in 1888, consisted of the tracts following:

The Pinard ranch or Buena Vista ranch: This ranch had a lake on it and between 500 and 1,000 fruit trees. The witnesses differed widely as to its extent and value. Rafael Romero estimated the total extent at 3,000 acres, including hills and pastures, 300 acres under cultivation, and three or four miles of ditching. He estimated the value of the ranch at thirty thousand dollars. William Naeglin, on the other hand, said there was about ninety acres under ditch, and that the ranch did not include more than 250 acres, hills and all. He placed the value at seven thousand dollars. Gandert said it was worth fifteen to twenty thousand dollars in 1873, and was worth forty thousand dollars now. Sebolla ranch: R. Romero estimated its value now at two thousand five hundred dollars, William Naeglin placed it at three thousand dollars, and Gandert its worth in 1873 at six thousand dollars.

House and lot in Mora used as a store, estimated by Romero to be worth five thousand dollars, and by William Naeglin at two thousand dollars. Gandert fixes its value in 1873 at five thousand dollars.

271 Leonora Beaubien property, situated in Mora: Old house and lot estimated by R. Romero at a value of two thousand dollars. William Bransford property, farming land near Mora, estimated by Romero to be worth one thousand five hundred dollars. Land in Agua Negra valued at five hundred dollars.

10th. On March the 19th, 1875, Frank Metzger made a settlement, or provision for the support of herself and children, with Vivian-Martin, the mother of complainants, by which he gave to her property and money to the value of three thousand dollars, and took her receipt for the same. The property and money consisted of money, cattle, a mortgage for five hundred dollars, and five hundred dollars in cash. The receipt was signed by Vivian- and also by her as guardian of her minor children, complainants; and purported to release him from personal services of whatever nature, rendered by said Vivian- Martin and her children.

From the pleadings and evidence submitted my conclusions in the case are as follows:

1st. That the complainants are the natural daughters of Frank Metzger by Vivian- Martin, and are properly heirs to any estate left by him at his death, both their father and mother being single at the time they were born, and no impediment to their marriage.

2nd. That the wife of Henry Korte, Juana Guitterrez, was likewise a daughter of Frank Metzger by her mother, Apolonia Guiterrez, and although the latter was a married woman at the time of the birth of her daughter, yet I am of the opinion that the written declaration made by Metzger before the probate court had the effect, even under the civil law, of constituting her an heir to Metzger's estate, but not the sole and universal heir.

3rd. The question as to the amount of property, real and personal, left by Frank Metzger at his death is the troublesome one. The evidence does not seem so conclusive on either side as to remove all

misgivings. But let us trace up events. It is certain that for some time during his life Frank Metzger was the possessor of considerable property. His opportunities were good in the early days of New Mexico, and he had the capital and capacity to improve them. He was an economical, close and secretive man; and what people knew of his possessions beyond lands, merchandise and visible property was merely speculative and not actual. He had lived and done business at the town of Mora since 1849, and was reputed to be wealthy. In 1866, Henry Korte, a young and active man, became acquainted with and married Juana Metzger, a daughter of Frank Metzger by Apolonia Guitterrez. Korte has been characterized by one of the witnesses as an extremely "close-fisted man who never spent a cent more than he was compelled to spend." He was grasping and avaricious. He became a partner in business
272 with Metzger, investing some three thousand dollars of his own money and property and some five thousand dollars more which he says Metzger gave to his wife, thus making an investment of $8,000. This partnership of Metzger and Korte existed until June 9th, 1873, when it was dissolved, or at least a purported notice of dissolution was published in the Las Vegas Gazette. Metzger also made deeds purporting to transfer all his real estate to Korte; also his interest in the mercantile business and cattle, by bills of sale. All of these instruments were written out carefully and executed before witnesses with a degree of formality and publicity unusual with these close-tongued, secretive and cautious partners, and which never before or afterwards characterized their dealings with each other. The unusual character of the transaction is to my mind a suspicious circumstance. The deed to two tracts of land, viz., the tract bought of Leonore Beaubien, and the tract known as the "Bill Bradford" tract, specified that Metzger sold his undivided half interest therein to Korte, and that the other half interest already belonged to Korte. The deeds to the other tracts mentioned in the findings of facts were to all the tracts of land, as if up to that time Metzger was the sole owner of them. The firm had sufficient capital to operate with and was out of debt. The partners were close-fisted, grasping men. Neither had spendthrift habits and they ought and probably did accumulate money. Why this transaction was had, Metzger transferring all his property, giving notice of dissolution and retiring from the firm, is not sufficiently explained by the pleadings or the evidence. There must have been some other reason—that Metzger — trying to avoid the payment of an unjust claim, or that he was contemplating a trip to Europe, which he did not take. After this transaction he exercised about as much activity in the business and about as much control and management of the property until his death as he did before. If there was any change in his conduct, it was not noticeable by his friends. The payment of money made by Korte to Metzger at the time the deeds were executed smacks of a pretended or play payment. Another transaction had about a year previous to this dissolution whereby Metzger made a declaration attempting to constitute the wife of Korte his sole and universal heir and thus exclude

these complainants and cut them off from any participation in any property he might leave at his death, does not look right for a man endowed with natural affection for his offspring, and unfortunate offspring at that. These two circumstances were likewise followed by another unnatural and unusual one—in March, 1875, when a settlement was had between Vivian- Martin and Frank Metzger, whereby Metzger paid to Vivian- some two thousand dollars' worth of cattle for personal services, and Vivian- signed a release
273 on behalf of her minor children, these complainants, Metzger seeming then to have some property left for that purpose, though it is claimed he had sold it all two years before to Korte. If Korte had had an undue influence over Metzger and was scheming to procure the disinheritance of these children of Metzger he would likely have gone at it in about this way. Metzger lived with Korte, and the latter seemed to possess his full confidence.

This firm must have made money and must have kept it or hid it. They had no use for banks or other depositories known to any one but themselves. In about 1880, Manuel Esquibel, as mayordomo, turned over to them some 4,087 head of cattle. These cattle were all disposed of previous to Metzger's death, and a large amount of money must have been realized from their sale. What has been done with it, is a question which no witness has yet answered. Korte, as administrator of the estate of Metzger, says Metzger did not have it, and inventories no more property as belonging to him than many a tramp can rightly claim. Naeglin, as administrator of the estate of Korte, swears that he did not find over $80.00 in cash belonging to him, and the personal property returned amounting in value to $600. The reputed wealth of this firm of peculiar men seems to have vanished from sight, as from the hand of a conjurer, and it is left solely to conjecture and speculation that a fortune in golden pieces lies hid away in the bosom of mother earth, where a lucky accident will some day reveal it to some person more needy and perhaps just as worthy of it as either Metzger or Korte. The visible property remaining consists of ranches and houses, more or less fallen into decay, and delapidated. What ought to be the judgment of a court of equity and good conscience in such a case?

That Metzger voluntarily set about devising ways and means to disinherit and cut off from any share in his property these complainants, his helpless daughters, with a dark shadow already thrown across their lives, is beyond credence and unworthy of belief. If Henry Korte connived at it and sought to further it by machinations, he ought not to enjoy the fruits of such a wrong.

The master concludes, that considering all the circumstances of the case, in connection with the presumptions that may be reasonably indulged and the misgivings and mysteries attending it, the visible property should be equally divided between the two parties to this suit, the complainants and the heirs and representatives of Henry Korte—that is, the complainants, Doloritas, Josefita, and Isabelita Martin—should be each decreed to have an undivided sixth interest in the following ranches:

The Pinard or Buena Vista ranch, the Sebolla ranch, the houses

and lots in Mora; and also in the following property, in case
274 Henry Korte had not disposed of it previous to his death, to innocent purchasers: the Leonore Beaubien property, the William Brandford property, and the land in Agua Negra, and that the other undivided half of such property should be decreed to belong to the heirs of Henry Korte and wife.

The witnesses differ so widely upon both the value and extent of these houses and lands that I do not see how any other form of decree can be rendered in the case without taking further testimony on these points.

May 1st, 1891.

All of which is respectfully submitted.

JOHN H. KOOGLER,
Special Master.

And now the foregoing statement and finding as to the facts proven and established by the evidence in each of said causes are ordered to be incorporated in the record of said supreme court as part thereof as fully as we may be thereunto empowered, the July term of the supreme court having been adjourned on the 26th day of September, A. D. 1896, and this order made and signed by each of the judges while in his district respectively.

THOMAS SMITH, *Chief Justice.*
NEEDHAM C. COLLIER,
Associate Justice, Supreme Court of New Mexico.

Signed at Silver City, in the third judicial district.

GIDEON D. BANTZ,
Associate Justice of the Supreme Court of New Mexico & Presiding Judge of the Third Judicial District Court.

Signed at Santa Fé, N. M., in the first judicial district.

N. B. LAUGHLIN,
Associate Justice of the Supreme Court and Judge of the First Judicial District.

275 And afterwards, to wit, on the 21st day of November, A. D. 1896, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a notice; which notice is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et als.*, Appellants,
vs.
HENRY KORTE *et als.*, Appellees. } No. 582.

The complainants in the above-entitled cause are hereby notified that on Tuesday, November 17th, A. D. 1896, the defendants, Henry Korte and others, in said cause will apply to the Honorable Gideon

Bantz, one of the associate justices of the supreme court of the Territory of New Mexico, who prepared the opinion of said supreme court in said cause, to settle and sign the findings of facts in said cause, on which to perfect the appeal of said cause to the Supreme Court of the United States.

LONG & FORT,
Solicitors for the Defendants.

I, Elisha V. Long, one of the solicitors for the defendants, certify that I delivered to Veeder & Veeder, solicitors for complainant, a copy of the findings of fact in the above cause, and also a copy of the foregoing notice, Nov. 14th, 1896, and also verbally notified said counsel on Nov. 15, '94, what said findings would be and contain.

ELISHA V. LONG,
One of the Solicitors for the Defendants.

276 And on the same day, to wit, the 21st day of November A. D. 1896, there was filed in the office of the clerk of the said Supreme Court an affidavit of value; which affidavit of value is in the words and figures as following, to wit:

DOLORITAS MARTIN DE CORDOBA *et als.*, Appellants,
vs.
HENRY KORTE *et als.*, Appellees. } No. 582.

Elisha V. Long, being duly sworn, on his oath says that he has personal knowledge of the property in litigation in the above-entitled cause, and that the value of the said property in controversy and litigation in said cause exceeds the amount of five thousand dollars, exclusive of fees and costs in said cause, and that the value of the property claimed by the appellees in said cause exceeds the amount of five thousand dollars, exclusive of costs and fees in said cause.

ELISHA V. LONG.

Subscribed and sworn to before me this 19 day of September, A. D. 1896.

[SEAL.] ROYAL A. PRENTICE,
Notary Public.

277 In the Supreme Court of the Territory of New Mexico.

I, Geo. L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing contains a true, perfect, and complete copy of the transcript of record, proceedings, and papers in the cause lately pending in said supreme court, wherein Doloritas Martin de Cordoba *et als.* were appellants, and Henry Korte *et als.* *was* appellees, as the same remain- of record and on file in my office.

Witness my hand and the seal of said supreme court this 20th day of November, A. D. 1896.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS,
Clerk of the Supreme Court of the Territory of New Mexico.

Endorsed on cover: Case No. 16,447. New Mexico Territory supreme court. Term No., 271. William Naeglin, Annie Naeglin, Annie Naeglin, administratrix of Henry Korte, deceased, *et al.*, appellants, *vs.* Doloritas Martin de Cordoba, Jose Manuel Cordoba, Josifita Martin de Duran, *et al.* Filed December 10, 1896.

No. 35.

MAY 4 1898
JAMES H. McKENNEY,
Clerk.

Submitted May 4, 1898.

Supreme Court of the United States.

October Term, 1897.

ELIAS NASOLIN, et al., vs. DOLORITAS MARTIN De CORDOBA, et al.

NO. 271.

Brief for the Appellants.

WASHINGTON, D. C.
THE ADVERTISER CO.
1898.

IN THE

Supreme Court of the United States.

October Term, 1897.

WILLIAM NAEGLIN, et al., vs. DOLORITAS MARTIN De CORDOBA, et al.

NO. 271.

Brief for the Appellants.

WASHINGTON, D. C.,
THE ADVERTISER CO.
1898.

IN THE

Supreme Court of the United States.

October Term, 1897.

WILLIAM NAEGLIN, ANNIE NAEGLIN, ANNIE NAEGLIN ADMINISTRATRIX OF HENRY KORTE, DECEASED, ET AL., APPELLANTS,

vs.

DOLORITAS MARTIN DE CORDOBA, JOSE MANUEL DE CORDOBA, JOSEFITA MARTIN DE DURAN, ET AL.

No. 271.

Brief for the Appellants.

The bill of complaint of the Appellees against Henry Korte was filed on the 29th day of March, 1886, in the Fourth Judicial District, Territory of New Mexico, County of Mora. (Record page 1).

On the fourth day of June, 1887, Henry Korte filed his answer in that Court. (Record page 18).

But before this, on the 8th day of May, 1885, a proceeding was filed in the Probate Court of the County of Mora, New Mexico, to prove Doloritas Martin, Josefita Martin, Isabelita Martin to be the natural children of Frank Metzger, deceased, and that deceased left no legitimate children and praying that they be adjudged to be heirs of the said Frank Metzger and entitled to share in the distribution of the said estate. (Record page 36).

Upon hearing the testimony the Probate Court, on the 7th of May, 1885, decided that the declaration of Frank Metzger, filed in that Court on the 6th day of May, 1872, which declaration appears on page 196 of the Record, constituted Juana Metzger his sole and universal heir and from this decision an appeal was taken by the complainants on the 8th day of May, 1885. (Record pages 34 and 35).

An amended petition was filed in the District Court, County of Mora, on the 12th day of September, 1885, to establish in that Court that the three persons named in that complaint are the natural children of Frank Metzger who died in February, 1885 leaving no other heirs. (Record pages 37 and 38).

The respondent, Henry Korte, died and his administrators, Agapito Abeyta, Jr., and Juana Metzger de Korte and his heirs, as legal representatives of Henry Korte, deceased, Annie Naeglin, William Naeglin, her husband, Charles Korte, Frank Korte and Edward Korte, his children, were made parties defendant in said cause in lieu of said Henry Korte, deceased, on the 8th day of April, 1889. (Record page 41).

A mass of testimony was taken which is printed on pages 44 to 186 of the record.

The report of the Special Master was made May 1st, 1891, and will be found on pages 198 to 204 of the record.

The final decree of the Court, filed in September, 1892, is on page 205 and sets aside the report of the Master "So far as said Master finds that complainants are entitled to any of the property referred to in their said bill and the Court further finds, upon the pleadings and proof herein, that the complainants are not entitled to the relief prayed for by them or to any relief in the premises." So the bill was dismissed.

On the 23rd of November, 1893, an appeal was taken by the complainants to the Supreme Court of the Territory of New Mexico. (Record page 206).

A decree of the Supreme Court of the Territory of New Mexico reversing the decree of the lower court was entered on September 7, 1896. (Record page 225).

On the 20th of October, 1896, an appeal was taken by the respondents from the decree last mentioned to the Supreme Court of the United States. (Record pages 228 to 229).

NATURE OF THE CONTROVERSY.

The movers in this proceeding to secure an estate are an unmarried woman named Viviana Martin, her family of children, and some others interested in the enterprise. The Martin woman never married, but had a large family of children by an admittedly miscellaneous paternity. The pater-

nity of no one of the children who are complainants in the bill, was identified by the child's name, but all of them were Martin's only. Three of these fatherless children were selected as a means to acquire an estate supposed to be large, and for this purpose their fatherhood was assigned to Frank Metzger, the maker of the supposed estate. The estate, if it existed, could only be acquired by securing the decision of a court having jurisdiction that these children were the natural children of Metzger, and that his estate was not disposed of at the time of his death. It was found impossible to secure this decision from the Probate Court having jurisdiction or from the District Court to which it was taken. Metzger's name was given to Juana, to whose mother he was not married, but it was never given to either of the children of the woman Martin.

How is it possible after the lapse of years and after the death of the alleged father to establish the fatherhood of children nameless, because of their unknown paternity, and belonging to a large family of children of a miscellaneous paternity whose mother was never married?

Plainly there can be no determination of such a question under such circumstances by any court. A declaration of the identity of the father in such a case must necessarily be a bold assumption.

Frank Metzger on the 6th of May, 1872, by solemn record made in the Probate Court, County of Mora, Territory of New Mexico, declared that the persons claiming to be his natural children and heirs were not his natural children and heirs; for he put on the records of that Court his final will and decree that the one daughter who bore his name was his one and only, absolute and universal heir of his property at all times during his life and after his death. (Record page 196).

This denunciation of the pretensions of the three children of Martin was of record in the Court where she lived from May 6th, 1872, to the 19th day of March, 1875, at which last date the children and their mother received and accepted from Frank Metzger three thousand dollars, in consideration for which she and the whole family solemnly stipulated as follows:

"And furthermore we release, discharge, and forever exonerate the said Francisco Metzger, *his heirs*, administrators, executors against any claim, demand, action, debt or debts, things and causes in law or equity, and be it whatever nature it may, be it existing heretofore, now, or in the future."

In this transaction the woman Martin and her whole family recognized, affirmed, and acquiesced in the sole heirship of Juana Metzger, which fact had been then of record nearly

three years. And this signed instrument itself shows that the three pretenders of her family were classed with all the rest; for all signed the paper together. The reason for this instrument is plain. The whole family had lived on and taken care of a ranch belonging to Metzger for some years, and like a prudent man he desired to leave to his sole heir an absolute bar to any fraudulent claim which might be made after his death. How is it possible for any court to countenance or tolerate vexatious proceedings by these people against Metzger's sole heir when, during his life for a consideration of three thousand dollars, they bound themselves to abstain therefrom?

The controlling facts in this case are too plain to be obscured by interested witnesses. Every citizen of the United States has a right, as age advances, to dispose of his whole estate after the payment of his debts as he pleases, and to retire from business whenever he sees fit to do so. Metzger's intention, as to the settlement and disposition of his estate, is made clear and indisputable by his acts before his death. He gave away as he pleased such sums of money as to him seemed best. He was for years in active business with Korte, who married his sole heir, and Korte had an equal interest with Metzger in this business. In execution of his recorded recognition of Korte's wife as his sole and universal heir, he gave to her while living of his estate whatever he saw fit. And he distributed whatever sums in money to those who had claims upon him as his judgment and benevolence dictated. After years of active partnership business with the husband of his sole acknowledged daughter and heir, he determined and carried into effect a dissolution of the partnership, and at the same time conveyed the whole of his visible estate to Korte. His right to do this can not be disputed or controverted, because he was in debt to no one and because the transaction thus effected defrauded no one. How much money he had at this time or how much value in notes and bills payable to him is no concern whatever to anybody, and at that time only concerned Frank Metzger. Whatever estate he had in this form succeeding the conveyance of all the real estate and merchandise to Korte was his own exclusive estate to do with as he pleased. If the day following he elected to transfer the whole to his sole heir or to divide it among other friends or relatives, it violated no right of anybody and no obligation of Metzger's to any one.

For these reasons the complainants have not proven that they are heirs of Frank Metzger, deceased.

But if it were otherwise, they can take no share of the property which the Special Master and the Supreme Court of

the Territory of New Mexico adjudged to be theirs as such.

The conveyance of the property by Metzger to Korte is a complete bar to the claim asserted.

If the conveyance was a conveyance made in good faith and without a fraudulent purpose, that property from the time of its conveyance belonged absolutely to Korte. His title was good against the whole world. If the conveyance was not made in good faith it was a fraud. The testimony and pleadings seem to show that the claimants asserted it to be a fraud and made for the purpose of cheating the holder and owner of a note against Metzger. If the transfer was made for the purpose alleged by the complainants, they can take nothing by their bill of complaint. The law is well settled that where property is conveyed and transferred by a person for such a purpose he who transfers the property can not maintain a suit for its recovery. Neither can any one claiming under the one who thus transfers property maintain a suit to recover the property transferred. As to these complainants, the result is the same, whether this was a bona fide transfer for full consideration or whether it was a transfer for the purpose assigned by the complainants. If these complainants are heirs of Metzger, they are bound by Metzger's act in making this transfer, and the property is forever beyond their reach.

Upon this point, Bump, in his work upon Fraudulent Conveyances says, page 445 par. 432:

"The statute (of Frauds) was designed solely to protect the rights of creditors, and consequently it renders a fraudulent transfer void only as to them, and makes no provision whatever in regards to its effects between the parties. This is the effect of the word 'only.' This word was inserted to restrict the broad provisions of the statute to the rights which the legislatute designed to protect, and thus left the relative rights of the parties to the provisions of the common law. A conspiracy to defraud creditors is a defence against good morals, common honesty, and sound public policy, for it is a let and hindrance to the due course and execution of law and justice, and tend to overthrow all true and plain dealing, bargaining and chevisance between man and man; without which no commonwealth or civil society can be maintained or continued. It is therefore a proper case for the application of the maxim: "In pari delicto melior est conditio defendtis." Porro autem si et dantis et excipientis turpis causa sit, possesstorem potiorem esse et ideo repetitionem cessare. The principle that a collusive contract binds the party to it is a principle which commends itself no less to the moralist and to the jurist for there is no obligation upon any one to extricate a rogue

from his own toils. On any other principle a knave might gain but could not lose by a dishonest expedient and inducements would be furnished to unfair dealing if the law were to repair the accidents of an unsuccessful trick.

A fraudulent grantee therefore is allowed to retain the property, not for any merit of his own but for the demerit of his confederate in accordance with a wise and liberal policy which requires that the consequence of a fraudulent experiment shall be made as disastrous as possible.

The law endeavors to environ a debtor with all possible peril and make it appear that honesty is the best policy."

Stewart *vs.* Kerney 6 Watts. 453, 31 Am. dec. 482.

Falconer *vs.* Jones 3 Dev. 334.

In paragraph 433 Bump further states:

"A fraudulent transfer is good as against the grantor his heirs, executors, administrators, parties claiming under him, and his agents, vendees and grantees."

In connection with this part of the case it should be noted that the complainants have introduced witnesses by whom they establish the fact beyond question that the transfer was made in good faith and for full consideration. This was accomplished when they showed that Metzger shortly afterwards claimed that Korte owed him $12,000, and that Korte admitted it in presence of the witness and gave a note for that amount to Metzger. It is no affair of these claimants whether Korte paid that note to Metzger, and Metzger gave away the money to his sole heir or to some one else worthy to receive it. Metzger had the right to give away the note or the money received for it. The fact is established, however, that at the date of the transaction Korte owed Metzger on account of the property transferred to him about twelve thousand dollars after the payment of the money to Metzger at the time of the conveyance of the estate.

The bill of complaint and the testimony present for determination of the Court two questionsr: First, what estate and property did Metzger own at the time of his death and, second, who is entitled to that estate?

It is conclusively determined by the evidence that he left no personal estate whatever, except a few things of nominal value. It is manifest from this that he disposed of, during his life, to his own satisfaction, all his moneys, notes, and movable property. The evidence further shows that he owned at his death no real estate whatever. He once owned a large estate, but he deliberately and of his own motion conveyed the whole of that estate in 1873 to Korte and to Korte and his wife. Before that date Korte was his partner in business, and Metzger, as such partner with Korte, also owned

real estate, the interest of each in such real estate being equal. Metzger, up to that time, owned a large amount of real estate in his own right. It was not partnership property. The partnership business of Metzger and Korte never included this real estate owned by Metzger. Metzger conveyed to Korte the whole of the estate which he owned in his own right, and he conveyed to Korte his half interest in the real estate which before that he and Korte owned as partners in the business. Before this transaction and in 1872 Metzger put on record in the Probate Court his will constituting "Juana Metzger, wife of Henry Korte, and daughter of Apolonia Guiterrez, deceased, as my natural, and only absolute, and universal heir of my property which I possess, and whom I declare that by this my declaration, submitted to your honorable court, she, the said Juana Metzger, wife of Henry Korte, deceased, may enjoy the right, privileges and prerogatives of a daughter of mine, recognized as such by me, the undersigned, for her benefit at all times during my life and *after my death*." To this record Vicente Romero, probate judge, affixed his certificate that this declaration, thus given and recorded, "has been of his own free will and of his sound mind and that he signed the same, signing his name with his own hand in Mora, this 6th day of May, of 1872." Thus it appears that when Metzger, in 1873, made this transfer of real estate he was, in fact, carrying out the intention expressed in his recorded will by conveying to Korte and to Korte and his wife, the very estate that he intended to go to Korte's wife if he retained ownership thereof up to the time of his death. The deed on page 192 conveyed in terms the home property in Mora to "Henry Korte and Juana Maria Korte de Metzger, husband and wife."

At the date of this transaction, if the evidence is to be believed as to the profits of the partnership business, as to Korte's business qualifications, and as to his cash capital outside the partnership capital when he entered into partnership with Metzger, Korte must have had a large amount of cash. He made the cash necessary to pay to Metzger and this cash was exhibited to the witnesses to the deeds. It undoubtedly passed to Metzger. Metzger had the right to dispose of this cash as he saw fit. It can not be doubted, in view of his recorded will, that all of his estate of this character which he saw fit not to bestow on other relatives and friends before his death, was used in execution of his recorded will. After this transfer of real estate, during a period of about twelve years up to the time of Metzger's death Korte exercised exclusive ownership in his own right of this estate. That ownership was never disputed. He paid taxes on the whole estate and

controlled the whole estate. It was entirely reasonable and natural that Metzger, who had made his wife his sole heir and who made his home with his sole heir and her husband, should be reverenced and respected by Korte and his wife and that the greatest deference should be paid to his opinion and judgment in respect to the management of the estate which he had conveyed to them.

The whole evidence shows the attempt to make this estate partnership property under the firm name of Korte to be a mere pretext. There was no partnership and there was no reason for any partnership between Metzger and Korte under the firm name of Korte. It is preposterous to assert that Metzger and Korte dissolved partnership in 1873 and made an absolute, complete settlement in respect to all partnership property in order to conduct thereafter the partnership business under the name of Korte. If such had been the intention of the parties all that was needed was to give notice to the public accordingly, that the partnership business heretofore conducted in the name of Metzger and Korte would hereafter be conducted in the name of Korte. There was no reason whatever, if such was his purpose, for conveying real estate before that owned by Metzger to Korte.

At the time of Metzger's death Korte had an undisputed titleto the real estate now sought by the complainants to be converted by the court into an estate belonging to Metzger. By the record the claimants and the whole world had been informed for twelve years that the estate was Korte's and not Metzger's. If the estate was Metzger's and not Korte's, Metzger must have conveyed it to carry into effect some purpose which required the concealment of his estate. A great mass of evidence was taken, the witnesses being Mexicans or persons interested in making it appear that Metzger owned the estate and had conveyed it to Korte to conceal his ownership. To satisfy the Court and the Special Master that this was true, a suspicion of a fraudalent purpose and motive for the concealment of Metzger's ownership was successfully introduced. This suspicion was based on an assumption that there was a note of Metzger's in existence, the payment of which Metzger attempted to avoid by his concealment of ownership of the estate. The complainants undertook to create this motive on the part of Metzger for the transfer of the estate, by the witness, Morrison, on page 47 of the record. He was asked if he knew anything about Metzger having made a conveyance of his property in the name of Henry Korte.

A. "Yes, sir."

Q. "Now, state what you know."

A. "I don't recollect the exact date or time, but Metzger

and Henry Korte came to Las Vegas and stopped at my house. Among other things, he related to me he was under embarrassment about a certain note he had to pay, and he had paid it once before. That he was very much hurt about paying it, and that it amounted to eight or nine thousand dollars over his property in Henry Korte's name, in order to save himself."

Below, on the same page, the same witne s testifies that about a month and a half later when at Mora he asked Metzger "How he got along with that note, and he replied that he thought he had better pay it and be done with it."

Thus, it appears that the complainant's own witness shows that the pretended motive for the transfer was a sham motive set up by the complainants. There was no note of Metzger's, the payment of which he intended to avoid. There was no reason whatever for the concealment of Metzger's ownership of the property. The transfer was made without any fraudulent purpose whatever and because Metzger willed it by his own free will and act. Another absurd reason for the transfer was attempted to be created by the romantic statement that some of the witnesses understood that Metzger intended to go to Europe. It seems he never went. If he had conveyed the estate for that reason it is manifest that he conveyed it for the purpose of settling the estate substantially as he had by will recorded in 1872 that his estate should be settled. It is plain that if Metzger had not intended the transfer he made to be a final settlement of his estate, that some time during the twelve years in which he lived with Korte, and his sole heir after the transfer was made the title of the estate would have been changed. The transfer is thus shown to be on the part of Metzger a final disposition of the estate. That estate at the death of Metzger was an estate belonging to Korte and to Korte's wife and not to Metzger, and this was by the free and voluntary act of Metzger himself, never disputed by either Metzger or any other person up to the time of his death. All the evidence shows the title of the estate by record in Korte and his wife.

These considerations make a final disposition of the pretext set up of an estate of Metzger's in these lands.

The second question, as to who at Metzger's death were entitled to his estate, has perhaps already been sufficiently discussed. The evidence shows that Metzger made a record that it was his will that Juana Metzger, wife of Henry Korte, should take at his death his whole estate. It is singular that the Special Master should attempt to set aside this will of Metzger's and adjudge that three Mexican girls of the name of Martin, so ignorant that they can not approximate the dates of their birth, to be joint heirs with Juana Metzger, who was

made sole heir by Metzger and thereupon give the whole alleged estate of Metzger's to the three Mexican girls. These three ignorant Mexican girls, during Metzger's life, were fatherless for they had no father to give them a name. Their mother testified that she was the mother of seven living children and that she had one child that died, and she distributes the family between three or more fathers, although she never married. It appears on page 197 of the record in a paper signed by the members of this remarkable family, as a final settlement with Metzger on whose ranch they had lived for some years, that the three members assigned to Metzger were the only members without a name of their father. One was named Bonne after his reputed father; one was named Eberle after his reputed father; another has the name of Laumbach attached to her first name, Eleanor; another had the name Marta attached to her first name, Maria. Metzger gave his own name to the only daughter and child he ever acknowledged to belong to him.

Upon these facts the Special Master entered the following opinion: "That Metzger voluntarily set about devising ways and means to disinherit and cut off from any share in his property these complainants, his helpless daughters, with a dark shadow thrown across their lives, is beyond credence and unworthy of belief."

That is, the Special Master affirms that three Mexican girls, whose paternity during the whole of Metzger's life was disaffirmed by his acts, and disowned as heirs by the record of his will in the court, and disowned by him as heirs by the entire distribution of his estate to others before he died, were his acknowledged daughters and heirs and that he did not intend to disinherit and cut them off from a share in his estate.

The conclusion of the Master upon this point is equivalent to the affirmation that facts conclusively proven by the evidence are incredible and that therefore the Court in its decree will assume the facts to be the reverse of those proven.

The Martin woman and her flock were silent for thirteen years after Metzger made a record of his will that Juana Metzger was his sole heir and they were silent ten years after she, for herself, and after her flock solemnly renounced all claims upon Metzger's living, and all claims upon Metzger's heirs, executors, and administrators after his death. It was not possible after Metzger's death to prove his fatherhood of any of her nameless brood except by her own testimony. The ignorant girls who did not know approximately in what year they were born could know nothing of the unsolved mystery of their paternity. After Metzger's death the knowledge of this, if in fact any knowledge existed,

was necessarily limited to the mother who gave the only name to the girls they ever had. In other cases, where more definite knowledge existed, her children had the names of their different fathers. Consequently, for the Master of Court to find or decree that these girls are the natural daughters of Metzger, that finding or decree must be based on the testimony of the one witness who alone has knowledge of that fact and who waited until Metzger's death before she asserted that claim. The Court will notice that this woman swears that for years she had sexual intercourse with the man who had sexual intercourse with her mother, and who had a daughter by her mother. How can any court in christendom believe such testimony and distribute the estate of a man upon the basis of such testimony.

CONCLUSION.

The evidence establishes the fact first, that Metzger died leaving no essate, having settled and distributed his entire estate before his death.

Second, Juana Metzger, wife of Henry Korte, is the sole heir of Metzger. Consequently the complainents are not joint heirs of Metzger with Juana Metzger the wife of Korte.

The decree of the Supreme Court of the Territory of New Mexico should be reversed and with directions to that Court to dismiss the complainants' bill, the costs to be paid by the said complainants.

HARVEY SPALDING,
Attorney for Appellants.

Partial Analysis and Comparison of Testimony with the Report of the Master.

The report of Special Master Koogler seems to be a mass of errors, inconsistencies, and erroneous conclusions from premises wrongly assumed as proven.

For a moment let us submit to his findings of fact.

Assuming that Metzger and Korte were in partnership at the time of Metzger's death, and that Doloritas, Josefita and Isabelita Martin were the natural children of Metzger and entitled to a share of his property, are they not barred from ever claiming any sum of money or property, as they have failed to surrender the $3,000 paid by Metzger, as claimed by Viviana

Martin, because they were children and possible heirs of Metzger and entitled to support? See evidence of Viviana. Martin, page 67:

A. The only paper I signed was the receipt I gave to Don Francisco not to ask him for any subsistence during his life.

Q. You are sure, are you, that that is what the receipt contained?

A. Yes, sir.

Q. Was the receipt read over to you?

A. They read it over to me, and he told me to conform myself with what he gave me for my subsistence.

EXHIBIT M.

Know all men by these presents, that we, Viviana Martin, resident of La Cebollo, County of Mora, Territory of New Mexico, and Ramon Bonne, Andreas and Eleanor, wife of Andreas Laumbach, sons and daughters, who are of age, of the said Viviana Martin, and Maria Marta, Doloritas, Josefita and Isabelita, minor daughters of the said Viviana Martin, and represented by their mother, the said Viviana, as natural guardian for said minors, all residents of the County of Mora, in the Territory of New Mexico, for and in consideration of the sum of three thousand dollars ($3,000), to us in hand paid by Francisco Metzger, resident of the p'aza of Mora, county of Mora, Territory of New Mexico, the receipt of which is hereby acknowledged, by these presents we have released, discharged and forever exonerated, and by these presents we do release, discharge and forever exonerate, for ourselves, our heirs, administrators and executors, from any action or demand, debt or debts, thing or cause, of any nature whatever; and principally upon any claim against our mother, the deceased Polonia Guitteres, be it on account of inheritance or any other thing, cause, or reason; and also against any claims for personal services of whatever nature, done by the said Viviana Martin, or her daughters, or sons at any time heretofore, now, and in time gone by; and furthermore, we release, discharge, and forever exonerate the said Francisco Metzger, his heirs, administrators, and executors, against any claim, demand, action, debt or debts, things and causes in law or equity, and be it of whatever nature it may, be it existing heretofore, now, or in the future; and these presents are made, executed, and signed with the purpose and principle object that they may serve as a receipt to the said Francisco Metzger, his heirs, administrators and executors, of every and all of the reasons and considerations herein mentioned.

In testimony of which we have placed our hands and seals this 19th day of March, A. D. 1875.

her
VIVIANA x MARTIN. [Seal.]
mark

his
RAMON x BONNE. [Seal.]
mark.

her
ELEANORA x LAUMBACH. [Seal.]
mark.

her
ANDRES x EBERLE. [Seal.]
mark.

MARIA MARTA.

DOLORITAS.

JOSEFITAS.

ISABELITA.

By their mother and natural guardian.

her
VIVIANA x MARTIN. [Seal.]
mark.

Attested and witnessed by—

his
JESUS MA. x GALLEGOS. [Seal.]
mark.

his
FELIPE x GALLEGOS. [Seal.]
mark.

FRANCISCO GALLEGOS.

This paper, quit claim, or release, bond or contract, whatever it may be called, and the testimony above noted would indicate that Viviana Martin and her children received before Metzger's death their share of the estate. Until they have repaid this $3,000 they are certainly barred from asking relief of any court of equity. Viviana Martin claims that this money was paid simply to secure immunity from all demands during the life of Metzger but the release, itself, shows the contrary.

The judgment of the Master, set aside by the Court and finally affirmed by the Supreme Court of New Mexico, is in itself a contradiction. We call attention to page 203 of the Record. from which we quote:

"The Master concludes that, considering all the circumstances of the case, in connection with the presumptions that may be reasonably indulged and the misgivings and mysteries

attending it, the visible property should be equally divided between the two parties to this suit, the complainants and the heirs and representatives of Henry Korte; that is, the complainants, Doloritas, Josefita and Isabelita Martin, should be each decreed to have an undivided sixth interest in the following ranches:

The Pinard, or Buena Vista ranch; the Sebolla ranch, the houses and lots in Mora; and also in the following property, in case Henry Korte had not disposed of it previous to his death to innocent purchasers: The Leonore Beaubien property, the William Bandford property, and the land in Agua Negra; and that the other undivided half of such property should be decreed to belong to the heirs of Henry Korte and wife.

The witnesses differ so widely upon both the value and extent of these houses and lands that I do not see how any other form of decree can be rendered in the case without taking further testimony on these points."

The Master states and the evidence shows that Korte had at least a one-half interest, except in that portion of the real estate referred to in Exhibit E and 204, page 192. This portion of the property is deeded to Henry Korte and Juana Maria Korte de Metzger, husband and wife.

The judgment or opinion of the Master can not apply to any share of real estate admittedly belonging to Korte or to Korte or his wife. The three complainants therefore under a reasonable view of the opinion of the Master can not each claim more than an undivided one-sixth interest in the share of the property belonging to Metzger. It is submitted that the property deeded to Korte and wife can not be classed as partnership property as it can not by any possible means be deemed to be the property of Metzger and Korte doing business under the firm name of Henry Korte. The power and right of Metzger to give away or deed his property has not been questioned nor can it be except by some creditor who may be defrauded by his gifts and transferees. From the undivided one-half interest in Metzger's share of property must also be deducted the $3,000 paid by Metzger years before his death to Viviana Martin and her children.

We deny, however, that Metzger had any financial interest in the business or real estate in the hands of Henry Korte at the time of Metzger's death.

As to the general worthlessness of the Master's decision we refer to pages 202 and 203 from which we quote:

"Another transaction had about a year previous to this dissolution whereby Metzger made a declaration attempting to constitute the wife of Korte his sole and universal heir and

thus to exclude these complainants and cut them off from any participation in any property he might leave at his death does not look right for a man endowed with natural affection for his offspring and unfortunate offspring at that. These two circumstances were likewise followed by another unnatural and unusual one, in March, 1875, when a settlement was had between Viviana Martin and Frank Metzger, whereby Metzger paid to Vivian some two-thousand dollars worth of cattle for personal services, and Viviana signed a release on behalf of her minor children, these complainants."

A few lines below at bottom of page 203 read again:

"That Metzger voluntarily set about devising ways and means to disinherit and cut off from any share in his property these complainants, his helpless daughters, with a dark shadow already thrown across their lives, is beyond credence and unworthy of belief. If Henry Korte connived at it and sought to further it by machinations, he ought not to be permitted to enjoy the fruits of such a wrong." Now, what can be expected from any opinion from a Master who states one fact at the top of a page and the absolute converse at the bottom? Yet this opinion, or rather that portion below center of page 203, is referred to with approval by the Supreme Court of New Mexico. See page 211:

"The Master found that Korte had not in reality paid much of anything for the property, and that in truth and in fact Metzger and Korte were partners after the conveyances. The Master expressly found that it was not the purpose of Metzger to disinherit his children, the complainants, and he recommended a decree in their favor." For some reason the facts as stated at the top of page are overlooked in the Court's decision. The Supreme Court of New Mexico also stated: "The Master had opportunities of judging as to the weight of the testimony by personally having been present at the taking of the evidence." It is on this assumption apparently that their conclusions are reached. Facts are, as shown by evidence and record, that evidence of witnesses was not taken by Koogler, as he only identified certain exhibits, etc. Another point in the report of the Special Master, showing oversight on his part, see page 199 of the Record. Master's report states that he accepted a receipt for $18,330. See Exhibit, page 195, and it will appear that $18,330 in cash and ($2,300) two thousand three hundred in book accounts are referred to in the receipt. Did not the Supreme Court of New Mexico err in giving credit to opinions of law and statements of fact where on the face of the report such errors and contradictions are seen. We will now proceed to compare the report of the Special Master with facts as shown by the evidence.

As to his statement Number One, page 198, it seems to be clearly proven that during Metzger's life he handled large sums of money, etc. We deny that proof shows that he had any accumulated property at time of his death. It seems to us that about the entire possessions of Metzger in 1873 consisted of the $20,630 received for his share in the partnership business and for his real estate, etc. Of this he gave Viviana Martin $3,000, his nephews, brothers and sisters certain sums, how much is not known. See evidence William Gandert, page 164. And apparently a large debt referred to on the same page was paid after 1873. All the evidence indicates that Metzger was not paid wages by Korte, and if his natural expenses and gifts were taken out there would be little money left at his death. Attention is called to evidence of Gandert, page 164.

Q. Do you know how much Frank Metzger paid his nephews?

A. No, sir, he told me nothing about it. He only said, "I gave them their share, what it would come to."

We also deny that he died intestate.

As to his statement number two. The Master's statement that Apolonia Guitteers was married to Bernardo Martin can not be presumed to be proven in any satisfactory way. Being Catholics, record evidence could have been produced or failure accounted for. The statement that Viviana Martin had three children by Metzger and that she was unmarried is assumed, not proven. In fact, we doubt if paternity of these children could be proven. From description of the woman her knowledge of the subject must be vague. Viviana Martin, herself, admits illicit relations consecutively with three different men and no others. From her character and evidence the no others must be assumed as well as that she was faithful to each man in turn. Record proof of birth should have been furnished or inability accounted for. Is it not possible or even probable that Metzger's care for children was owing to relationship of Viviana Martin to wife of Henry Korte, they both being daughters of Apolonia Guitteers. The wording of receipt for the $3,000 seems to make this a reasonable explanation. It should be noted that all children of Viviana Martin sign this receipt. Why should they if the relationship or reason for interest only applied to the three complainants?

Statement of fact Number Four seems to err in concluding that Metzger resided equal portions of his time at Mora and at Cebollo ranch with Viviana Martin. Evidence shows that prior to 1873 Metzger was actively in business, being partner in a store at Mora, and also was interested in various other lines of business. All the evidence indicates that he was a

business man, and he certainly could not afford to spend one-half of his time at the Cebollo ranch. The evidence clearly shows that for some time prior to March, 1875, he had not been to the ranch at all. He died February, 1885; so for over ten years he did not have any dealings with Viviana or her children.

The fifth and sixth findings of fact are correct, except the receipt states $20,630 instead of $18,630 as given by the Master. Attention is also called to the declaration referred to in the fifth finding of fact. See Exhibit L, page 196.

EXHIBIT L.

(*Translation from the Spanish.*)

TERRITORY OF NEW MEXICO, }
COUNTY OF MORA. }

HON. VICENTE ROMERO, PROBATE JUDGE IN AND FOR THE SAID COUNTY:

Honorable Sir: Very respectfully I appear before your honor and make my declaration, affirming that I recognize and consider Juana Metzger, wife of Henry Korte, residents of said County of Mora, and daughter of Apolonia Guitteres, deceased, as my natural and only absolute and universal heir of my property, which I possess, and whom I declare, that, by this, my declaration, submitted to your honorable court, she, the said Juana Metzger, wife of Henry Korte, deceased, may enjoy the right, privileges and prerogatives of a daughter of mine, recognized as such by me, the undersigned, for her benefit at all times during my life and after my death, and I desire also that this be filed and remain of record on the records of the Probate Court of the aforesaid County of Mora.

I declare further that, however, I am commonly known by the inhabitants of this County of Mora and throughout other places by the name of "Don Francisco Metzger," but my real and proper name is "Frederick Metzger," as I subscribe my name on this declaration, this 6th day of May, 1872.

(Signed) FREDERICK METZGER.

I, Vicente Romero, Probate Judge in and for the County of Mora, Territory of New Mexico, do certify that he who subscribed his name to the foregoing declaration, under the name of "Frederick Metzger," is well known to me by the name of "Frederick Metzger," and that the declaration he has given has been of his own free will and of his sound mind, and that he signed the same, signing his name, with his own hand, in Mora, this 6th day of May, of 1872.

(Signed) VICENTE ROMERO, *Probate Judge.*

By the Probate Judge:
ANASTACIO TRUJILLO, *Clerk.*

This seems to be intended for a will, being recorded in the Probate Court and any property of Metzger left at his death should under this go to Julana Korte.

The 6th fact found is that transfer of business and property was a blind and that Metzger and Korte were still partners

doing business under the firm name of Henry Korte. We submit if this were so it could have no effect on the real estate transferred prior to Metzger's death. The testimony as to the continuance of the partnership in the store is indefinite, hearsay, and certain portions are given by the attorneys and promoters of this suit. The evidence of Viviana Martin and her daughters is not worthy of the slightest consideration in proving a partnership as it clearly shows that it is not given from any personal knowledge. Evidence of Rafael Romero, Veeder and Wm. Nolan should be taken very carefully, see testimony of Romero, on page 133 which shows that they all have a contingent interest in the case. This narrows down the evidence tending to show a continued partnership. Even this is hearsay, based on opinions formed because of seeing Metzger around the store. Korte undoubtedly consulted Metzger about business matters, possibly on account of Metzger's more mature judgment or from the natural deference due to the source of his prosperity and the father of his wife, or even possibly for the mercenary desire to please one in whose hands there was still money which could be withheld from his wife. It would seem that any of these reasons sufficiently explain their close relations. This is not a partnership or proof of a concealed partnership. Certain of the witnesses have stated that Metzger admitted they were partners but it usually narrows down to stating that he was interested, etc. The evidence of Arthur Morrison is the most specific on this point. He gives as a reason assigned by Metzger for deeding the property and business, that Metzger desired to avoid paying a note of $8,000 or $9,000. This note was probably paid later on and accounts for a portion of the money paid at the purchase of the business by Korte, see page 47. Even this witness, on cross-examination has to admit that he did not live in Mora and that it was only his opinion that they were partners at the time of Metzger's death, see page 49.

Q. "Can you tell me within a year of the time he spoke to you about his business connection with Henry Korte?"

A. "In 1880, after returning from the States I went to Mora and remained two or three days. I asked how he got along, and so on. He told me all right; he was getting very well. But he was growing very tired of business; he was satisfied that Henry was all right, and was well satisfied with Henry. That was the drift of his conversation."

This statement indicates that Metzger was out of business the last time Morrison saw him in the Fall of 1884. His reasons for knowing that the Martin woman was not married at the time of her relations with Metzger are to say the least very original. See page 51 and 52:

Q. "You say in your testimony that the mother of these children was not a married woman when they were born. How do you say so?"

A. "Because she had cohabited with another man heretofore. What I mean to say is that she did not live with a man for two years before."

Morrison's conclusions seem to conform to appellees wishes. Attention is called to page 55:

Q. "From that time, 1873, is it not true that Frank Metzger and Henry Korte were together engaged in business at Mora?

A. "Metzger was engaged in business; Korte, I supposed at that time, was a helper or clerk.

Q. Leaving supposition at one side, do you know that Frank Metzger and Henry Korte did not form a copartnership in business in which they were to be equally interested, equal owners, in the year 1868, or about that time?

A. I do not know any thing about such an arrangement.

Q. Do you know then there was not an actual transfer by Frank Metzger to Henry Korte of one-half of the interest in the business of Frank Metzger to Korte?

A. I don't know anything about it.

There is absolutely no doubt that Metzger and Korte were partners previous to 1873, yet Morrison, who claims, one might say, to be the confident of Metzger as to his most private affairs, business and personal, shows his absolute ignorance of a partnership known to the public in Mora. Is it not clear that his testimony is all of doubtful force and authority?

Evidence of Louis Kaahn as to partnership is worth nothing as evidence, as he, himself, on page 87 states that Metzger might have had interest in merchandise business and might not?

Antonio Domingo Lopez, an employee of Metzger and Korte, is brought forward to prove partnership but on examination he is very hazy, in fact, states that he knows that they were partners over fourteen years ago, that is in 1873. He is very doubtful as to dates and as partnership ended June, 1873, evidence certainly does not show partnership at death. (See page 95).

John H. Mink is another non-resident of Mora in whom according to appelles Metzger had great confidence but his story is not the same as Morrison's. He states:

A. Yes, sir; he told me that he had transferred to Henry Korte some property, and he mentioned it whatever it was, and that Henry Korte acknowledged himself indebted to him ten or twelve thousand dollars. Perhaps about half an hour after that conversation I asked Metzger if he had anything to

show for that indebtedness, and he told me he didn't think it necessary, that Henry would deal right with him, something of that kind, that he would do what was right, that he entertained no fear. I suggested to him the propriety to take a note from Henry Korte. Henry Korte agreed to that and both told me to write out a note. I wrote out a promissory note for about ten or twelve thousand dollars, I believe, I do not know if the note was with interest or not. And I believe I made it payable some months after demand. I am not quite certain about that, but I remember something of that kind. I turned the note over to Metzger. I gave the note to Metzger, after it had been signed by Henry Korte in my presence, and Metzger ordered Henry to put it away in his desk or safe or some place. Of course there was some other talk, but I don't remember it.

Q. "To whom was that note made payable?

A. "It was made payable to Frank Metzger or to his order, I believe.

Q. By whom was it signed, if any?

A. By Henry Korte, and perhaps by me as a witness.

Now, by their own witness, they claim continued partnership to be shown on account of no consideration and a fake transfer, and a dissolved partnership with balance due for the purchase of property and interest in business. If Mink is correct, partnership was clearly dissolved and Metzger was worried as to payment. If Morrison and others are correct there was no consideration. These are all appellee's witnesses.

Juan Jose Gallegos is produced by the complainants and though he saw Metzger daily, he did not know whether Metzger claimed to own interest in the store. If he had been a non-resident and seen the parties once a year probably he could have sworn that Metzger confided in him, that he was still a partner, etc.

Rafael Romero, one of the promoters of this suit, though quite young, being only thirty in 1888, and fifteen at the time of the dissolution of partnership, has decided ideas as to the value of property, revenue obtainable, etc. See page 123.

Q. What other piece of real estate, if any, do you know of that was held in the name of Henry Korte at the time of the death of Frank Metzger and that belonged to Frank Metzger at the time of his death?

A. There was a house and lot in the town of Mora.

There is no doubt in his mind as to the ownership though it is proven that this was deeded to Korte and wife in 1873 and that taxes were paid by them and not Metzger. The testimony of Romero goes on to show that a partnership existed but the animus is so plain and even if from a disinterested party is so indefinite and a matter of opinion that it seems to

us of little weight. We again refer to the fact that witness has an interest in the result. Admission is made, however, that cattle were branded, H. K. (See page 133). This bears on question as previous to the dissolution of partnership there was apparently a different brand. (See bill of Sale.)

Fernando Nolan, attorney for complainants and possible beneficiary, (See page 133, evidence of Romero) is a non-resident and confident of Metzger apparently resulting from Nolan's calls to borrow money. His testimony, page 137, states that needing a larger sum of money than usual he went to Korte who refused to lend the same without Metzger's approval but as Metzger's approval was obtained the money was loaned which witness states he repaid to Metzger in person. Why did Nolan apply to a minor member of the firm instead of Metzger at first? Does not this evidence plainly show that it was understood that Korte was in business alone?

It is natural when a business man does not desire to make a loan, or is doubtful as to advisability, to consult with a friend, or even a clerk. Why should it be deemed strange to consult Metzger in view of their personal relations?

See foot of page 138:

A. "I now remember one time he said that Henry didn't have nothing but the name: that he was the owner of the property. One time he got a little excited here. We were at the house of Mr. Green that day, and old man Green was joking with him, telling him that he didn't have nothing; that he was a poor man."

Q. "Told who?"

A. "He told Metzger. Old man Green told Metzger that Henry had everything. Frank Metzger answered him that he was badly miztaken; that if there was any poor man there it was Henry Korte; that he was the owner of everything and Henry Korte did not have but the name of having, but he didn't have."

This point will be referred to later, but it is cited as showing what Mora people thought as to business relations of Korte and Metzger, though we do not admit that the above answer is correct.

Page 140. This witness attempts to put into the mouth of Korte statements that he was still in partnership with Metzger at the time of Metzger's death. Korte's answer is the best evidence on this point. This same witness on page 150 states that Metzger stated to him that he had no other children than Juanita, Korte's wife.

Page 151. On cross-examiuation he seems to admit that he knows nothing about whether partnership was dissolved or not.

Q. "Have you any knowledge that Henry Korte didn't buy out the interest of Frank Metzger after their partnership was established?"

A. "I don't dnow anything about it if he did buy it."

Q. "Have you any knowledge that he didn't do so?"

A. "No, sir."

Q. "So far as you know he might have done so, is it not true?"

A. "He might have done that, I don't know.

Wm. Gondert is another out of town confident. See page 158:

Q. "Now state what that conversation was with Frank Metzger in the presence of Henry Korete?

A. "Well, it was in 1877 or 1878; I am not certain of the date or the year. I think it was in 1877, or may be 1876. One night we were down at Henry Green's. We had played dominoes, and Frank Metzger and Henry Green got into a kind of a quarrel. Green was a little excited, and he told Metzger that he was no man, that he was a 'peon;' that he was a man that had no property; that he was working for twenty-five dollars a month, and Frank got a little excited about that, and they had quite a quarrel there. It was in the night and I went home with Frank, and Korte opened the door for us, and we went into the house. Korte was there. Henry Korte asked: 'What is the matter, Frank?' 'Well' he says, 'that God damned Green he insulted me. He told me I was a peon. I can buy him and the whole town here with my own cash money, and need not take my property. I can buy it with cash money'. Then he went into a room and brought out a square box, one half the size of that table (referring to a table about three-and-one-half-feet long.) It was not very high; it was more like a drawer and it was filled with gold, fifty dollar pieces in it, twenty dollar pieces, ten dollar pieces, five dollar pieces, and they were all piled up in this box."

Now is it not puerile to bring in the result of a quarrel as proving a partnership? Metzger had money at that time probably what remained of the purchase money of business and property. Gandert could not be forced to testify that Metzger specifically stated that he had other property. Note the following question and answer:

Q. "Didn't Metzger say there that he not only had that, but he owned all the interest he ever owned in the ranches, property and store?"

A. "He said he need not take his interest in the property, what he had, but he could by the town with cash money."

What was said certainly does not apply to the business and property. On page 159 the evidence shows that at last they

succeeded in broadening the statement by asking leading questions and suggesting answers desired. This witness and others make much of the fact that both Korte and Metzger spoke of business as our business, etc. The bootblack at the Arlington speaks of our house and our hotel, but we do not think a thousand hearers could convince the Court that such a statement concealed a partnership. This witness on page 161 states that Korte treated Metzger more like a father than partner, but immediately by a leading question he is induced to state differently.

John D. W. Veider and Fernando Nolan, attorneys for complainants and expectant receivers of a contingent fee state that Korte testifies that he was partner with Metzger at his death, but on cross-examination Nolan weakens. (See page 167).

Instead of a mass of testimony in reality consisting of opinions based on memories of conversations or on hopes, the appellants offer little oral evidence to show that partnership was ended. But rely on record evidence. (See Exhibit H).

This notice to the public is in connection with the deeds and witnessed transfers sufficient to show the end of the partnership. Attention is called to the care with which the deeds and transfers are drawn up.

Exhibit D and 200 is a warranty deed of Frank Metzger's Cevollo ranch.

Exhibit B and 201 is a quit claim deed for the Agua Negra tract.

Exhibit A and 202 is a quit claim of the Beaubin and O'Neil tract, or at least of the undivided one-half interest owned by Metzger and also a quit claim of one-half interest in the "Bill Mansfield" tract. Both of these pieces of property had been bought by the firm of Metzger and Korte, probably from the profits of the business. How can the interest of Korte be taken away by the Master's report?

Exhibit C and 203 is a warranty deed covering the Buena Vista ranch from Metzger to Korte.

Exhibit E and 204 is a warranty deed covering the store and home of Metzger to Korte and his wife.

Exhibits I and K show the transfer of the interest of Metzger in the business and stock. It should be noted that this transfer is for the undivided half interest.

Exhibit J is a copy of the receipt for money and book accounts transferred to Metzger in full satisfaction of the property and business transferred.

Charlie Korte, son of Korte, identifies the book in which were kept invoices, and states that the first part is in the hand

writing of Metzger and a clerk, and the last part in the hand writing of Korte. (See page 171). This in itself shows a change in the business.

Alegandro Branch testifies that he was the attorney for Korte and was present at the time Nolan and Veider claim that Korte admitted that he was in partnership with Metzger at time of Metzger's death. (See page 179).

Q. "Now, at any time when you were present in the Probate Court, as Henry Korte's attorney, state whether or not Korte said, in words or substance, that there had been no dissolution of the partnership?

A. I never heard him say so.

Also see page 181.

Q. Now, since the year 1873, what do you know, if anything, about who was the owner and the manager of the store here in Mora, as between these men?

A. I don't know anything about it.

Q. Who paid the taxes on the real property here at that time?

A. During the time I was sheriff, Henry Korte.

Q. Who seemed to have charge of the business there?

A. It looked to me that Henry Korte had charge of it.

Did Frederick Metzger pay any taxes on any property aside from the store?

A. I don't know that he paid for the store, or how he paid. He paid on $12,000."

Juan Jose Gallegos (of Mora) states, on page 184, the following:

Q. "Do you know whether they were merchandizing together or not?

A. All I know is that one time Frank Metzger went to Europe, Henry remained in the store. Another time Henry Korte went to Europe and Frank Metzgar shut up the store and didn't sell any goods.

Q. Was that before or after 1873?

A. After 1873."

Also page 185.

Q. "Who seemed to have the management of the business after 1873, Henry Korte or Frank Metzger?

A. Henry Korte.

Also page 186.

Q. "State whether or not Frank Metzger ever said anything to you about whether he was in business with Henry Korte after the year 1873?"

A. "At the time that Henry Korte went to Europe, a great

many people used to come to buy goods there at the store. He refused to sell them; some requested him to sell them goods, and he answered, "I don't want to attend to any more business; this business belongs to Henry and I am too old to attend to any more business; besides he says, I only have one daughter and don't need to work any more, or to go into any other business."

Q. "What position do you hold at this time, if any?"

A. "I am justice of the peace of precinct No. 1, Mora county, New Mexico."

"Acts speak louder than than words." It is proven that when Metzger was away business continued and when Korte went away business ceased. This fact alone seems to carry more weight than all surmises and conversations reported on other side.

The seventh fact found by the Master seems correct, and to prove that Metzger had no real estate and was not interested in the business or property of Henry Korte for years prior to his death. The eigth and ninth finding seem correct. The tenth fact seems correct, except that actual value could readily have been obtained from Assessor's records and from evidence.

We submit that not one single point showing any right or title of Viviana Martin and her children in any property real or personal owned by Metzger at his death has been proven.

We consider it proven that for some time prior to Metzger's death he had no interest except as a friend and well-wisher in the business or property of Henry Korte or in the property owned by Korte and his wife.

It will appear that, while Metzger and Korte were in business for years prior to 1873, the real estate was not considered as belonging to the partnership, except two pieces which were apparently acquired in the course of business. Metzger had a right to deed his property for a consideration or without, and no one has a right to question such a transfer. The real estate not being partnership property with the exceptions above stated, it is hardly reasonable to suppose that it was deeded to Henry Korte as a firm name for Korte and Metzger. The deed to Korte and wife can not be assumed to be to Metzger and Korte, doing business under the firm name of Henry Korte.

Certainly without absolutely conclusive proof to the contrary deeds, when duly recorded, should be taken for what they state and should transfer property to the beneficiaries named.

The deeds were recorded and the ownership of the property not questioned from 1873 to 1886, and if any property were not transferred, it was certainly covered by the declaration of

Metzger filed in the Probate Court, and would be the property of Juana the wife of Henry Korte as was certainly the intention of Metzger.

We submit that the manifest desire of Metzger should be carried out. If the appellees are successful, the property will go to the children of Viviana Martin and not to the wife of Henry Korte as desired.

NAEGLIN *v.* DE CORDOBA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

No. 35. Argued October 13, 1898. — Decided October 24, 1898.

An order signed in vacation by the several members of the Supreme Court of the Territory of New Mexico cannot be considered an order of the court.

The statutes of New Mexico provide that, in the absence of legitimate children, illegitimate children inherit.

A natural guardian has no power to release the claim of a ward to an inheritance without the sanction of some tribunal.

On March 29, 1886, the appellees, Doloritas Martin de Cordoba *et al.*, filed their bill in the district court of the county of Mora, fourth judicial district, Territory of New Mexico, to establish their rights as the children and heirs of one Frederick Metzger. After answer the case was referred to a master, who reported findings of fact and conclusions of law in favor of the plaintiffs. Upon a hearing in the district court a decree was entered adversely to the conclusions of the master and for the defendants. On appeal to the Supreme Court of the Territory that decree was on August 24, 1895, reversed, and one entered remanding the case to the district court, with instructions to enter a decree in conformity with the findings and conclusions of the master. Thereupon the defendants appealed to this court.

At the time of entering the decree, and also of overruling

a petition for rehearing, no statement of facts was prepared by the Supreme Court, and no other determination of the facts than such as appears from the direction to enter a decree in conformity with the findings and recommendations of the master. But after the Supreme Court had adjourned, an application was made to have the findings of fact made by the master incorporated into the record as a statement and finding of facts by that court, for the purpose of an appeal, and upon that application the following order was entered:

"And now the foregoing statement and finding as to the facts proven and established by the evidence in each of said causes are ordered to be incorporated in the record of said Supreme Court as part thereof as fully as we may be thereunto empowered, the July term of the Supreme Court having been adjourned on the 26th day of September, A.D. 1896, and this order made and signed by each of the judges while in his district respectively.

THOMAS SMITH, *Chief Justice.*
NEEDHAM C. COLLIER,
Associate Justice, Supreme Court of New Mexico.

"Signed at Silver City, in the third judicial district.

GIDEON D. BANTZ,
Associate Justice of the Supreme Court of New Mexico and Presiding Judge of the Third Judicial District Court.

"Signed at Santa Fé, N. M., in the first judicial district.

N. B. LAUGHLIN,
Associate Justice of the Supreme Court and Judge of the First Judicial District."

It appears from the bill, answer and findings that Frederick Metzger, though an unmarried man, was the father of several children by different women, and this suit is one between these several illegitimate children to determine their respective rights to share in his estate. The counsel for appellants says in his brief: "The bill of complaint and the testimony present for determination of the court two questions: First, what estate

and property did Metzger own at the time of his death? and, second, who is entitled to that estate?"

Mr. Harvey Spalding for appellants.

No appearance for appellees.

Mr. Justice Brewer delivered the opinion of the court.

No question is made in this record as to the admission or exclusion of testimony. There being no jury the case comes here on appeal, and the only question we can consider is whether the findings of fact sustain the decree. Act of April 7, 1874, c. 80, 18 Stat. 27; *Stringfellow* v. *Cain*, 99 U. S. 610; *Cannon* v. *Pratt*, 99 U. S. 619; *Neslin* v. *Wells*, 104 U. S. 428; *Hecht* v. *Boughton*, 105 U. S. 235, 236; *Gray* v. *Howe*, 108 U. S. 12; *Eilers* v. *Boatman*, 111 U. S. 356; *Zeckendorf* v. *Johnson*, 123 U. S. 617; *Sturr* v. *Beck*, 133 U. S. 541; *Mammoth Min. Co.* v. *Salt Lake Foundry & Machine Co.*, 151 U. S. 447.

The order signed in vacation by the several members of the Supreme Court cannot be considered an order of the court. Assuming, however, for the purposes of this case, that, in view of the general language in the opinion of the court, we may take the findings of the master as its statement of facts, we observe that no doubtful question of law is presented for our determination. The master finds that Metzger was the father of the appellees, and that he owned certain property. These are questions of fact, resting upon testimony, concluded, so far as this court is concerned, by the findings, and into which it is not our privilege to enter.

While under the common law illegitimate children did not inherit from their father, the statutes of New Mexico introduced a new rule of inheritance (Comp. Laws, New Mexico, 1884, tit. 20, c. 4, sec. 1435, p. 680): "Natural children, in the absence of legitimate, are heirs to their father's estate, in preference to the ascendants, and are direct heirs to the mother if she die intestate." In other words, under this stat-

Counsel for Parties.

ute, there being no legitimate children, illegitimate children inherit.

It appears that on March 19, 1875, and while Metzger was living, the mother of these plaintiffs, then minors, in her own right and for the minors, receipted and relinquished all claims against him. Without stopping to consider what was meant by that release, and giving to it all the scope which its language may suggest, we remark that a natural guardian has no power to release the claim of a ward to an inheritance without the sanction of some tribunal. Woerner's American Law of Guardianship, p. 185, and following.

The decree is

Affirmed.

END OF CASE